

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 950**

RIN 3206-AL05

**Solicitation of Federal Civilian and
Uniformed Service Personnel for
Contributions to Private Voluntary
Organizations—Eligibility and Public
Accountability Standards****AGENCY:** Office of Personnel
Management.**ACTION:** Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the Combined Federal Campaign (CFC). These final regulations are being issued as part of OPM's effort to modernize the CFC and to realize administrative efficiencies. They were designed to address the current and future environment of the CFC where the electronic transmission of information will be more routine. As such, these regulations update the criteria for CFC eligibility, streamline the charity application process, ease the administrative burden on the local campaigns, promote the use of electronic technology in the administration of the CFC, and expand opportunities during disasters and emergencies for Federal donors to contribute to all charities participating in the CFC regardless of location.

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DATES: These regulations are effective November 20, 2006.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553(d)(3), the Director of the Office of Personnel Management finds good cause to waive the 30 day effective date for these regulations. Many national/international organizations including federations, federation members, and independent organizations, are beginning to prepare for filling out their 2007 CFC applications for submission to OPM in January 2007. If those organizations begin that process under the current regulations, then are required to revise those applications pursuant to these revised regulations, resources may be needlessly expended, there will be confusion in revising applications, and some applicants who would be eligible under the revised regulations might not apply under the current regulations. Finally, there will be confusion and resource implications for OPM to begin the review process when applications

may need to be withdrawn or revised if the regulations were not to become effective until mid December or later.

OPM is issuing final regulations concerning eligibility provisions and administrative requirements governing the participation of organizations and the administration of the CFC. These final regulations present a balanced approach to the current and anticipated future needs of the CFC and continue the tradition of accountability in the CFC by providing Federal donors with assurances that CFC participating charities provide real services and are fiscally accountable. OPM encourages stakeholders and non-profit sector institutions with an oversight mission to collaborate to ensure that all charities are fully accountable to the public they serve. OPM will continue to emphasize the importance of providing complete, accurate, and timely financial reports to donors, regulators and the public, and will support donors by providing them with information to evaluate the charities of their choice.

On June 29, 2006 (71 FR 37003), OPM issued comprehensive proposed regulations to revise the procedures governing the solicitation of Federal civilian and uniformed services personnel at the workplace for contributions to private non-profit organizations. That workplace solicitation is known as the CFC, administered by OPM under the authority of Executive Order 12353 (March 23, 1982) as amended by Executive Order 12404 (February 10, 1983). The proposed regulations were issued to reduce the burden on applicant charitable organizations seeking to qualify for the CFC, simplify the administrative process of determining whether charitable organizations are eligible to participate in the CFC, and facilitate modernization of the CFC. The proposed regulations are available at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-5795.pdf>.

In this final rule, OPM addresses the comments received on the proposed rules set forth at 5 CFR part 950. The 45 day public comment period ended August 14, 2006. A total of 415 comments were received from participating CFC organizations, Principal Combined Fund Organizations, members of Local Federal Coordinating Committees, individuals and a Federal government agency.

**Eligibility Provisions and Public
Accountability Standards**

Under the existing CFC regulations, there were 16 core eligibility and public accountability standards and 3 core administrative requirements that a charitable organization was required to satisfy in order to participate in the CFC. These appeared in the form of certifications in the annual CFC application. Many of the standards required specific documentation, such as audited financial statements and an annual report to demonstrate compliance. OPM had proposed removing eight of these standards, including the requirement that participating organizations' administrative and fundraising expenses not exceed 25 percent of its total revenue. OPM had proposed modifying some of the remaining standards to eliminate documented proof of compliance. The standards of eligibility and accountability being adopted by OPM in this Final Rule are summarized as follows:

1. Section 950.202(a)—National List Eligibility Requirements—Certify that the applicant organization provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. The proposed regulation set forth that a detailed schedule would be required as part of the application that described activities in each state or foreign country in each year. In addition, OPM clarified the types of information that it would consider acceptable to determine that real services are provided or to accurately determine the individuals or entities who benefit from the services. In addition, OPM proposed adding a statement to clarify that de minimis services, benefits, assistance, or other program activities in any state or foreign country would not be accepted as a basis for eligibility. One organization and one individual commented with a concern that OPM's attempt to clarify the eligibility requirements would still result in limited additional guidance for charities, federations, and OPM personnel. Both comments recommended that OPM amend the regulations to adopt an extensive list of factors against which OPM could evaluate whether an organization has made a clear showing of actual services, benefits, assistance or activities provided in each state or foreign country and also suggested criteria that OPM should adopt to define what constitutes substantial services. OPM

carefully considered these comments but is not accepting these recommendations and the Final Rule will adopt the proposed regulation. OPM believes that the most appropriate vehicle for any additional guidance in this area is through use of the existing CFC administrative memoranda process and through additional instructions in how to complete the annual CFC application.

2. Section 950.202(b)—National List Eligibility Requirements—Certify that the applicant organization is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170(c)(2) and that the organization is classified as a public charity under 26 U.S.C. 509(a). OPM proposed this revision to clarify that applicant organizations must be public charities, not private foundations, or exclusively government units or instrumentalities thereof. There were no comments on this proposal and OPM is adopting this change as proposed.

3. Section 950.203(a)(1)—Public Accountability Standards—Certify that the applicant organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. No changes were proposed to this standard and it remains the same as the existing regulation.

4. Section 950.203(a)(2)—Public Accountability Standards—Certify that the applicant organization accounts for its funds in accordance with generally accepted accounting principles and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. Under the proposed rule, applicants would no longer have been required to actually submit a copy of a recent audit with the application. OPM also proposed to require a certification that the organization had an audit only if it sought CFC participation on the national/international or international parts of the charity list and if it reported \$250,000 or more in revenue on its IRS Form 990. OPM proposed to exempt from the audit requirement applicant organizations seeking to participate in the CFC at the local level that reported revenue of less than \$250,000.

Numerous comments were received both in support of and against this proposal. Those opposed argued that reducing the number of CFC charities that are independently audited would increase the risk of fiscal mismanagement on the part of such

charities and could increase the number of applications for inclusion in the CFC. Those in favor noted that the cost of an audit imposes a disproportionate burden on smaller, local charitable organizations.

OPM has considered these various concerns. OPM agrees that by requiring charities with revenues over \$250,000 seeking to participate in a local campaign to submit audited financial statements with the application Federal donors will have additional assurances that such organization is fiscally accountable. OPM is also retaining the existing regulatory requirement that organizations seeking to participate on the national/international and international parts of the charity list, regardless of their revenues, certify that they account for funds in accordance with generally accepted accounting principles, have an audit of their financial statements conducted by an independent certified public accountant in accordance with generally accepted auditing standards, and submit a copy of their audited financial statements. In a departure from the existing regulation, organizations seeking local participation will be required to make those same certifications and submit a copy of their audited financial statements only if their revenues are over \$250,000. Organizations with revenues between \$100,000 and \$250,000 seeking local participation will be required to certify that they account for funds in accordance with generally accepted accounting principles and have an audit of their financial statements conducted by an independent certified public accountant in accordance with generally accepted auditing standards, but will not be required to submit the audited financial statements with their application. Charities with revenues less than \$100,000 seeking local participation will be required to certify that they have adequate financial controls in place, in form or substance as specified by OPM, but will not be required to submit these with their application.

5. Section 950.203(a)(3)—Public Accountability Standards—Certify that it prepares and submits to the IRS a complete copy of the organization's IRS Form 990 or that it is not required to submit an IRS Form 990, and provide a completed copy of the organization's IRS Form 990, including signature, with the CFC application regardless of whether or not the IRS requires the organization to file this form. OPM proposed to revise this standard to require a certification in addition to having the applicant submit a copy of the completed IRS Form 990 together

with supplemental statements and Schedule A with the application. OPM also proposed to no longer routinely check to determine whether the IRS Form 990 revenues and expenses reported reconcile with the audited financial statements since this reconciliation is required to be performed by the organization on the IRS Form 990 in Parts IV-A and IV-B. Comments opposing the proposed rule noted that the level of CFC accountability would be lowered if the previously required reconciliation between the IRS Form 990 and the audited financials were removed. Comments in favor of the proposed change suggested that the current reconciliation statement that organizations are required to provide on the IRS Form 990 should be sufficient to qualify for participation in the CFC. One organization pointed out that efforts by leading nonprofit infrastructure organizations to achieve greater consistency in financial reporting standards for the charitable sector are the most appropriate vehicle to promote improved reporting to the IRS and should not be used as a means to exclude charities from the CFC. OPM agrees with the comments in favor and will adopt the proposed regulation in the final rule.

6. Section 950.203(a)(4)—Public Accountability Standards—Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to existing regulations at section 950.203(a)(3), by adding the amount spent on "management and general" (line 14) to "fundraising" (line 15) and then dividing the sum by "total revenue" (line 12). No substantive changes were proposed to this standard. The references to specific lines of the IRS Form 990 were removed, in anticipation of future changes to the Form by the IRS and the proposed regulation will be adopted in the final rule.

7. Section 950.203(a)(5)—Public Accountability Standards—Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and a majority of which serve without compensation. No changes were proposed to this standard. One commenter suggested that CFC charities be required to provide the names and terms of their governing board and dates of prior year board meetings. OPM notes that under the current CFC regulations, the Director currently has the discretion

to request this information as deemed necessary.

8. Section 950.203(a)(6)—Public Accountability Standards—Certify that the organization's fundraising practices prohibit the sale or lease of its CFC contributor lists. OPM proposed removing this standard. Due to the number of public comments that claimed this could undermine donor confidence in the CFC, OPM is withdrawing this proposed regulation and will retain the existing regulation.

9. Section 950.203(a)(7)—Public Accountability Standards—Certify that the applicant organization's publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims. OPM had proposed to remove this standard. A majority of comments favored retention of this certification as a precaution against abuse by applicant organizations and as a possible enforcement tool in cases of use of deceptive methods to mislead donors. OPM is withdrawing the proposed regulation and will retain its existing regulation.

10. Section 950.203(a)(8)—Public Accountability Standards—Certify that contributions are effectively used for the announced purposes of the charitable organization. No changes were proposed to this standard.

11. Section 950.203(a)(12)—Public Accountability Standards—Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list. No changes were proposed to this standard.

12. Section 950.203(a)(13)—Public Accountability Standards—Provide a statement in 25 words or less describing the program activities of the charitable organization. As proposed, this provision is being removed as an eligibility standard, but is retained as an administrative requirement in section 950.401(g)(2) and will be required from each charitable organization completing the CFC application. One commenter proposed that OPM specify that the 25-word statement is not permitted to be misleading. OPM points out that section 950.203(a)(7) of the existing CFC regulation, which will be retained in the Final Rule, requires that organizations certify that their publicity and promotional activities are truthful and non-deceptive. OPM believes that section 950.203(a)(13) is more appropriate as an administrative requirement. The proposed change is therefore adopted in the final rule.

13. Section 950.605—Sanctions Compliance Certification—Each

federation, federation member and unaffiliated organization applying for participation in the CFC must, as a condition of participation, complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). No changes were proposed to this certification.

Current Eligibility and Public Accountability Standards Removed in the Final Rule

1. Section 950.202(c)—National List Eligibility Requirements—Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h). The majority of comments broadly supported OPM's proposed removal of this standard because the existing regulatory requirement has been misconstrued by some as prohibiting permissible advocacy by charities participating in the CFC.

Given the interrelatedness of items 2 and 3, and the comments received, the analysis follows after item 3—Section 950.203(a)(4)(ii).

2. Section 950.203(a)(4)(i)—Public Accountability Standards—If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable under all the circumstances presented. It must provide an explanation with its CFC application and also include a formal plan to reduce these expenses below 25 percent.

3. Section 950.203(a)(4)(ii)—Public Accountability Standards—The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances.

A significant majority of comments on these requirements opposed OPM's proposal to remove the 25 percent administrative and fundraising rates (AFR) threshold and the explanation and reduction plan requirements as a condition of participation in the CFC.

The commenters argued that allowing a charity, regardless of its AFR ratio, to participate in the CFC would result in an expansive increase in the number of applicant organizations applying to the CFC. Commenters noted that such increase could significantly raise the costs to manage the application process and increase local campaign expenses to produce larger brochures. Many comments suggested that OPM should instead increase the acceptable AFR threshold to 35 percent, consistent with the standards commonly used by stakeholders in the charitable community. Other comments stated that the existing regulation should be retained and that OPM should not expect that donors would have the capability or resources to conduct their own research regarding an organization's AFR. One national organization commenter supported the elimination of the AFR standard as long as information about these expenses is readily made available to donors. That same organization suggested that OPM require applicant organizations with AFRs that exceed 35 percent to also include an explanation or rationale for the higher expenditures.

While OPM carefully considered this matter, OPM is adopting its proposed regulation in the final rule and is removing the 25 percent AFR ceiling as an eligibility standard. The issue of obtaining a specific AFR in order to participate, the subjective nature of OPM's determination regarding an acceptable explanation of a high AFR, and the determination of the merits of the proposed reduction plan have caused an administrative burden on OPM staff. Much of the litigation affecting the CFC in the past several years have centered on this issue, resulting in a substantial resource drain on OPM staff, including the Office of CFC Operations. OPM believes that Federal donors are capable of determining what their acceptable AFR levels should be for charities they consider supporting. In the interest of ensuring that potential Federal donors are informed of participating organizations' AFR, OPM will continue to calculate and publish the AFR of participating charities by listing the AFR in CFC information including the charity lists that are distributed to the donor. OPM will add a statement to all CFC Brochures that will note that OPM, as well as the philanthropic community at large, remains concerned about excessive AFR levels. The Brochure will inform the CFC donor that the philanthropic community generally considers an AFR in excess of 35% to

be problematic and that potential CFC donors should carefully review the circumstances applicable to the potential charities of their choice to be certain they fully understand and accept the AFR situations for such charities before donating to them.

OPM believes that Federal donors should have an opportunity to donate to a wide range of charitable organizations and should not be limited in their choices to those charities with AFRs of a specific rate, so long as the AFR information is available to them to make an informed decision. OPM encourages Federal donors to be knowledgeable about those charities to which they choose to donate. OPM already requires organizations to provide their World Wide Web address, if available, where donors can research the organization. Many local campaigns also provide donors with electronic access to information from and about participating organizations. As the CFC continues to modernize and more donors have more information available through the internet, donors can have unlimited references on most organizations. OPM is retaining the rule as it was proposed.

4. Section 950.203(a)(9)—Public Accountability Standards—Certify under which governmental entity the charitable organization is chartered, incorporated or organized (Congressionally chartered or the state in which it is registered). OPM proposed to remove this standard. There were five comments which opposed the proposed removal of this standard. The comments noted that this information was not a burden to collect and could be used to obtain additional information on the organization. OPM believes that any such additional information can be obtained from the application itself or from contacting the organization directly. OPM will adopt the proposed regulation in the final rule and will remove this eligibility standard.

5. Section 950.203(a)(10)—Public Accountability Standards—Certify that the organization has received no more than 80 percent of its total support and revenues from government sources as computed by dividing line 1c by line 12 from the IRS Form 990 submitted pursuant to section 950.203(a)(3). Many comments agreed with OPM's proposed removal of this standard. Two organizations favored retaining this certification based on the rationale that the spirit of the CFC is to make the charitable donations of Federal employees available to qualified charities, while keeping out of the CFC those organizations which already have stable funding and are, in essence,

providing government supported services. Two other organizations agreed with removing the standard, but requested that any such organizations be denoted with an asterisk in the CFC donor brochure to alert donors that they received more than 80 percent of their funding from government sources. OPM believes that the existing requirement has served to exclude legitimate organizations interested in diversifying their sources of support from participation in the CFC. OPM will remove this standard in the final rule as proposed.

6. Section 950.203(a)(11)—Public Accountability Standards—Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. OPM proposed to remove this standard because a significant portion of the information sought in the annual report is already the subject of a certification or obtained as a result of other eligibility requirements and public accountability standards contained in sections 950.202(a) and 950.203(a)(3). A number of comments were received both supporting and opposing the proposed rule change. One comment in favor argued that with an increasing number of organizations using expanded online resources to present information, the proposed rule change would encourage more organizations to present their information on-line. Comments against OPM's proposed regulation claimed that requiring an applicant to provide a copy of its annual report enhances accountability and transparency. OPM believes that the annual report is not an essential component of the application, particularly since the application requires a detailed description of services, benefits or activities which are carefully reviewed to determine eligibility. OPM agrees that donors should be encouraged to access this information online whenever possible or otherwise obtain an annual report directly from the charity. OPM adopts the proposed regulation in its final rule.

Changes corresponding to these changes in eligibility and public accountability requirements also are being made to the eligibility requirements for the local part of the charity list contained in section 950.204, and national and local federation standards set forth at sections 950.301, and 950.303. As proposed, national, international and local federations are required to submit documents to demonstrate compliance

with the audit, financial, governance and annual report requirements. These requirements are clarified in sections 950.301(e)(2) and 950.303(e)(2). Federations provide services to 15 or more member organizations. Services include the receipt and distribution of funds through the CFC. Because federations handle approximately 80 percent of all funds distributed through the CFC, the documented evidence of compliance for federations will continue to be required.

7. Section 950.204(b)(1)(ii)—OPM has decided not to proceed with the proposed change that would require statewide services to be provided over a 3 year period, and has withdrawn that change from the final rule.

Miscellaneous Administrative Changes

In addition to changes and modifications to the eligibility standards described above, OPM proposed other CFC administrative changes to clarify CFC procedures, address areas of concern noted over the years by OPM and stakeholders, and to better recognize the use of electronic technology in the administration of the CFC. Except where noted, comments received on the following proposed regulatory changes supported such changes. Given the substantive concerns regarding two of the proposed administrative changes, involving solicitation of contractor personnel on Federal premises and the relationships between national organizations and their bona fide local affiliates, OPM is withdrawing the proposed regulation and retaining the regulations as they previously existed with minor clarifying changes. These issues are described in greater detail in the next section.

Proposed changes being adopted in the final regulations:

1. Various changes modifying references associated with the use of paper-based information and processes such that these new terms apply within an electronic CFC environment.

2. Section 950.101 includes a revised definition of "Charity List" to be consistent with section 950.401(g)(2). Throughout the CFC regulations, OPM has revised the terms "National and International Lists" to use the terms "National/International" and "International" to be consistent with the definition of "Charity List" in section 950.101 and the provisions of section 950.401(g)(2).

3. Current section 950.102(a) limits the annual solicitation of donors to a six week period between September 1 and December 15. One commenter stated that the six week period should be retained. OPM believes that eliminating

the requirement of a specific six week period is in the best interests of the campaign and will allow local campaign leadership to determine the appropriate length of the solicitation that must still occur between September 1 and December 15.

4. Current section § 950.102(c) states that the Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. OPM will adopt as the final rule the proposed rule that clarifies and specifically articulates the Director's authority to perform audits and investigations of all CFC activities, and resolve any identified issues resulting from such audits and investigations.

5. Current section 950.103(f) describes a six week period for soliciting donors similar to that described in item (2) above. Corresponding proposed changes are adopted in the final rule.

6. Current section 950.103(h) states that a Federal employee may participate in a local CFC campaign only if that employee's official duty station is located within the geographic boundaries of that campaign. OPM proposed a modification to allow for contributions to organizations outside of an employee's official duty station in the cases of emergencies and disasters as defined in section 950.102(a), upon approval by the Director. OPM further proposed to give the Director authority to remove all geographic restrictions under any circumstances at some future date upon the implementation of appropriate technology. Because OPM anticipates such elimination of these geographic restrictions on giving at some point in the future, local eligibility based on adjacency and statewide presence will no longer be necessary and will be eliminated upon implementation of appropriate electronic technology to be announced by the Director at some future date, without the need for a new proposed regulatory proposal. Also see related changes proposed to section 950.204(b)(1). OPM retains these provisions in the proposed rule.

A number of comments expressed concern over OPM's plans to manage the flow of contributions during large scale emergencies or disasters and one organization suggested that OPM should study the impact of this provision on the structure and costs of the campaign. A disaster relief organization recommended that in the event of a major disaster, a separate campaign for disaster relief should be conducted concurrently with the regular CFC in order to distinguish better the contributions designated for disaster

relief activities. OPM will consider this suggestion but does not believe that adoption of the proposed regulation would preclude the implementation of such a separate disaster campaign since the Director currently exercises general supervision over all operations of the CFC and has the authority to take all necessary steps to ensure the achievement of campaign objectives. Therefore, there is no need to specify the handling of the campaign during times of emergency or disaster beyond the authority already available, and OPM is adopting the rule as proposed.

7. Current section 950.104(b)(6) encourages local Federal agencies to appoint loaned executives to assist in the campaign and grant administrative leave to all loaned executives appointed. OPM is adopting the proposed rule that will clarify that Federal agencies should not place loaned executives on administrative leave since the CFC activities are considered part of the official duties of the Federal employee loaned to assist in the CFC.

8. Current section 950.104(c) states that the LFCC must annually solicit applications for the PCFO via public notice. OPM proposed to remove the requirement for an annual application and allow LFCCs to enter into multi-year agreements, at their discretion. OPM also proposed the removal of the requirement to solicit the PCFO applications via a public notice and to provide the LFCC discretion as to how to announce the solicitation as long as it reaches the audience of prospective applicants. OPM will adopt these provisions in the final rule.

9. Current section 950.106(a) states the amount a PCFO may recover for campaign expenses shall not exceed 10 percent of the estimated budget. OPM adopts the proposed regulation, correcting an error in this section which would state that the recovery amount should not exceed 110 percent of the estimated budget.

10. Current section 950.109 describes certain conflicts of interest for Federal employees who serve as an LFCC member or fundraising coordinator. OPM proposed to add clarifying language regarding LFCC members not being able to serve in their official capacity on the board of directors of the non-profit organization that administers the CFC in its local area. This situation was addressed in administrative guidance at CFC Memorandum 2002–15. OPM is adopting this proposed revision in the final rule.

11. Current sections 950.201(a)(1) and (2) discuss eligibility for national organizations to be included on the

national list. OPM proposed adding references for international organizations, which must also meet these criteria, and clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility. OPM is adopting these proposed revisions in the final rule.

12. Consistent with changes set forth above in paragraph 6, above, current section 950.204(b)(1) is modified to allow for the Director to provide for elimination of adjacency and statewide presence eligibility requirements commencing with the implementation of appropriate electronic technology. See related changes adopted in section 950.103(h). In addition, OPM clarifies this section to define more clearly an adjacent local campaign. A number of comments were received opposing this proposed change, noting a concern that statewide charities and adjacent charities will lose contributions if they are not included in the charity list, and donors will be affected if they lose the opportunity to contribute to charities of their choice. OPM notes that the current adjacency and statewide eligibility criteria will remain in place until appropriate technology exists to permit donors to make contributions without geographic restriction. OPM does not intend that there would be any gap period during which a potential donor would be deprived of an opportunity to donate to an eligible charity during the transition from the current rule to the elimination of geographic boundaries. OPM believes that the cost efficiencies inherent in the use of appropriate technology will only be realized by strongly encouraging the use of online electronic listings. OPM also acknowledges that some form of paper charity list may be needed to reach certain donors that may not have access to computers. In these circumstances, OPM will issue appropriate guidance to facilitate a full listing of all eligible charities within the geographic area. OPM is adopting this provision in the final rule.

13. Current section 950.204(b)(2)(iii) is being amended to add Guam, the Commonwealth of Northern Mariana Islands, and American Samoa to the list of U.S. territories whose charities may be exempt from the requirements of § 950.202(b). A number of comments pointed out that local organizations based in these territories do not generally participate in the CFC because they are not granted this exception. OPM determined that local non-profit organizations based in U.S. territories

are entitled to similar privileges as those in Puerto Rico and the Virgin Islands, provided they meet all other required eligibility requirements.

14. Current section 950.204(e) is being revised to remove the 15 day period for LFCCs to make eligibility decisions and providing instead that the decisions must be made as of a date determined by OPM and published in the annual CFC calendar.

15. OPM proposed adding a new subsection to section 950.204(g) that clarifies the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, applying an appropriate sanction or penalty, as appropriate, prior to determining eligibility of local organizations. OPM is as adopting the proposal in the final rule.

16. Current section 950.301(a) states that the Director may recognize national and international federations that conform to eligibility and accountability standards. OPM proposed clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive applying an appropriate sanction or penalty, as appropriate, prior to determining eligibility of national and international federations. OPM is as adopting the proposal in the final rule.

17. Current section 950.301(c) states that an organization may apply for inclusion as a national CFC federation if the applicant federation has 15 or more member organizations each of which meet the eligibility criteria of sections 950.202 and 950.203. A national federation must provide copies of applications for all of its members in the initial year that it applies to participate in the CFC as a federation, but needs to submit copies of applications after the initial year only at OPM's request. OPM proposed to add clarifying language that the federation itself does not count among the 15 or more members organizations required to receive federation status. Four comments stated that the federation itself should count as one of the 15 members. OPM believes that the federation itself should not be included as one of those 15 member organizations, and is adopting the proposed clarification in the final rule.

18. Current section 950.301(d) discusses the role of national and international federations. OPM proposed a terminology change from "decertification" to "withdrawal of federation status" to conform to a terminology change proposed in section 950.603(a). Numerous commenters indicated that they opposed this change as well as the changes regarding sanctions and penalties in section

950.603(a). The commenters did not believe the proposed change provided an adequate appeal process. OPM notes that it did not change the sanctions and penalty requirements in the proposed rule. The proposed changes simply clarified and consolidated the many sections that dealt with penalties and sanctions into a single section at section 950.603(a). The requirements are those required by Federal law and OPM is adopting the proposed changes in the final rule.

19. Current section 950.301(e)(2) requires national and international federations to certify that their financial activities conform to generally accepted accounting principles (GAAP) and that they are annually audited by an independent certified public accountant in accordance with generally accepted auditing standards (GAAS). That section further requires a copy of the audited financial statements and that the audit must verify that the federation is honoring designations made to each member organization. Finally, the current regulation waives the audit requirement for newly created federations operating for less than a year. OPM proposed to clarify and simplify the regulatory language to apply to all eligibility requirements and public accountability standards, contained in sections 950.202 and 950.203 and required of independent organizations and federation members, to the national and international federations. OPM does not view this as a substantive change and is adopting the proposal in the final rule.

20. Current section 950.301(e)(2)(iii) requires national and international federations to disclose important administrative expense information to the CFC and donors in its annual report. One organization suggested that OPM should consider the differences in accounting systems used by federations and establish a standard reporting system. OPM agrees that this could be of potential value and will consider this as an area for future administrative review. OPM is retaining the provision as proposed.

21. Current section 950.303(a) states that the LFCC must approve local federations that conform to eligibility and public accountability standards. OPM proposed to clarify the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility of local federations. OPM adopts this proposal in the final rule.

22. Current section 950.303(c) is the same requirement for local federations

as that described for section 950.301(c) regarding national federations. OPM is adopting in the final rule the clarification that the local federation itself does not count among the 15 or more members required to receive federation status.

23. Current section 950.303(d) sets forth the role of local federations. OPM will adopt in the final rule a terminology change from "decertification" to "withdrawal of federation status" to conform to a terminology change in section 950.603(a).

24. Section 950.303(e)(2) sets forth the same requirement for local federations as that is described above applicable to section 950.301(e)(2). The changes adopted for national and international federations also are adopted for local federations in the final rule.

25. Section 950.303(e)(2)(iii) sets forth the same requirement for local federations as that described above in section 950.301(e)(2)(iii) for national and international federations. OPM will adopt this requirement in the final rule.

26. Current section 950.401(g)(3) states that each national and international federation and charitable organization will be assigned a code number by OPM and each local federation and local charitable organization will be assigned code numbers by the LFCC. OPM is modifying this regulation to facilitate alternative mechanisms by which OPM may assign charity codes. A number of comments expressed concerns over the manner in which OPM is planning to implement a re-coding of the charities, as part of the development of a centralized national CFC list. One comment indicated that OPM has already begun the implementation of such re-coding process by officially announcing that OPM will be assigning both national and local code numbers and requiring that LFCCs notify charities accordingly. OPM notes that while the planning for the assignment of new codes for all CFC charities has begun, the official assignment of codes will not occur before these final regulations are implemented. OPM further notes that it has had extensive consultation with stakeholders on the need for a new coding structure and the limitations that the existing regulation imposes on the structure of the campaign. OPM is adopting the proposed modification in the final rule.

27. Current sections 950.401(i) and (j) are being amended to provide that local affiliates of a national organization, not separately incorporated, still can be determined locally eligible using the national organization's IRS tax-exempt

determination letter and audited financial statements accompanied with a certification that the local affiliate operates as a bona-fide chapter or affiliate in good standing of the national organization and that the affiliate is covered by the national organization's 501(c)(3) tax exemption, IRS Form 990 and audited financial statements. The affiliate must provide a pro forma IRS Form 990, page 1 and Part V only, for CFC purposes in addition to the other documents required under section 950.204.

28. Current section 950.601 governs the release of donor names and addresses and the transmittal of this information to designated charities. OPM proposed changing the terms "names and address" to "information," to allow other donor information to be released, such as contribution amount and home email address. Numerous comments supported this change but suggested that clear "opt-in, opt-out" choices be given to donors. A number of comments opposed this change in light of the proposed change to remove the prohibition against sale or lease of contributor lists in section 950.203(a)(6). However, since OPM is retaining the current regulatory prohibition against sale or lease of contributor lists in section 950.203(a)(6), and will not adopt the proposed change, OPM does not believe there is substantial disagreement with this proposed change in section 950.601 and will adopt that change in the final rule.

29. Current section 950.604 specifies that federations, PCFOs and other participants shall retain documents pertinent to the campaign for three campaign years. OPM proposed to clarify that three campaign years is actually three completed campaign periods and is not based on calendar years. OPM is adopting this clarification in the final rule.

30. Current section 950.801(a)(1) specifies the period during which OPM will accept applications from organizations seeking to be listed on the national and international parts of the charity list. OPM proposed to modify this section to replace it with a period to be determined by the Director. OPM will create, maintain, and issue a CFC calendar of events each year to define the applicable time periods. Initially, OPM will provide for a specific 60-calendar day period between December and February as the period during which OPM will accept applications. OPM adopts this modification in the final rule.

31. Current section 950.801(a)(2) states that within 35 calendar days of the closing date for the receipt of annual

applications, the Director will notify each national and international applicant of the results of the application review. OPM proposed to remove the defined 35 day requirement and annually publish an anticipated date for notification on the calendar of events that OPM will maintain. OPM is adopting this provision in the final rule.

32. Current section 950.801(a)(3) states that the LFCC must select the PCFO no later than March 15 each year. OPM proposed to remove the reference to March 15 and state that the LFCC must select the PCFO no later than a date to be determined annually by OPM. OPM will provide the date in its annual CFC calendar of events and initially set the date as February 15 to allow campaigns to begin early planning for the campaign beginning after the effective date of these regulations. OPM is adopting this provision in the final rule.

33. Current section 950.801(a)(4) requires the Director to issue a national and international list of eligible organizations by June 30. OPM proposed to remove the specific date and state the requirement by a date annually determined by the Director. Several comments indicated that given the impact on all campaigns of the timely release by OPM of the national and international parts of the charity list, that a regulatory adjusted deadline would be preferred. One comment recommended that OPM change the date for issuance from June 30 to July 30 to be consistent with current actual practice. OPM believes that future release of the national and international parts of the charity list and the screening of charities will be expedited by improved technology and administrative improvements in these regulations and the use of a specific deadline in regulation will impose an unnecessary constraint. OPM is adopting the proposed change in the final rule.

34. Current section 950.801(b) requires the Director to annually issue a timetable for accepting and processing national and international applications. OPM proposed to modify this section to specify that the Director will create, maintain and issue annually a CFC calendar of events with specific dates that include the accepting and processing of national and international applications as well as other significant CFC dates. A majority of comments expressed concern that without regulatory deadlines, local campaigns could not plan adequately or hold OPM accountable for the release of the national and international parts of the charity list. The proposed CFC calendar

will be official CFC guidance and OPM believes it will be sufficient to allow for adequate local administration of the campaigns. In addition, OPM does not anticipate significant changes to any of the dates being removed from the regulations and will provide the annual calendar well in advance of the annual campaign and time for selection of the PCFO for any campaign. Local campaigns will have adequate time to plan for the campaign based on the issuance of the CFC calendar of dates. OPM is adopting the provision in the final rule.

35. Current 950.901(f)(1) requires the remittance checks sent by payroll offices to the PCFO each pay period to be accompanied by a statement identifying the agency, the dates of the pay period and the total number of employee deductions. OPM proposed to add the pay period number to the information required to be on this statement. OPM is adopting this provision in the final rule.

36. Current sections 950.901(i)(1) and (i)(2) each contain specific dates for the PCFO to notify charitable organizations of the amount of pledged contributions (currently no later than February 15) and to begin its periodic distributions to charitable organizations. OPM proposed to remove the specific dates referenced in the regulation and provide that these actions will occur no later than a date to be determined annually by OPM. OPM will publish the dates in its annual CFC calendar of events. Initially, OPM plans to extend the notification date to March 15. OPM proposed to remove the requirement for monthly payments and allow all campaigns to make quarterly payments beginning no later than April 1. Several comments noted that some small organizations could be adversely affected by quarterly payments. OPM notes that the PCFO will continue to have the option of retaining the monthly payments and is adopting the proposed provisions in the final rule.

37. Current sections 950.105(e), 950.302(c), 950.302(d), 950.304(c), 950.304(d), 950.403, and 950.603 all provide for certain penalties and sanctions for federations, unaffiliated organizations, and PCFOs. OPM proposed to clarify and combine these penalties and sanctions into one new section 950.603 and remove the other references from the regulations. Numerous commenters indicated that they did not agree with the changes in section 950.603(a) because they did not provide an adequate appeal process. OPM notes that it did not change the sanctions and penalty requirements in the proposed rule. The proposed changes simply clarified and

consolidated the many sections that dealt with penalties and sanctions into a single section 950.603(a). The requirements are those required by Federal law and OPM will adopt these changes in the final rule.

Proposed Regulations Withdrawn in Favor of Existing Regulations

1. Current section 950.103(g) prohibits solicitation of contractor personnel, credit union employees and other persons employed on Federal premises, and retired Federal employees but allows these individuals an opportunity to participate in the CFC by making single contribution. OPM's proposal to revise this rule by eliminating restrictions against the solicitation of the above personnel received extensive comments from the Office of Government Ethics (OGE). In particular, the OGE stated that the proposed rule did not specify any standards governing the circumstances under which the solicitations may occur. OPM agrees this is an issue that requires additional study and is not adopting the portion of the proposed rule that would have allowed the solicitation of non-Federal personnel. OPM will retain the existing regulation in order to have more time to re-examine this issue, while clarifying that donations offered by non-Federal personnel must be accepted. OPM adopts the portion of the proposed rule that allows for other electronic means of contributing, including credit cards, upon approval by the Director.

2. Sections 950.204(b)(2)(iii) and (b)(2)(iv) were proposed additions to the regulations intended to recognize financial relationships between national organizations and their bona fide local affiliates and to remove certain requirements depending on how those relationships were structured. OPM received numerous comments opposing the proposed changes which pointed to the emerging trends among national charitable organization structures to operate as single corporations with affiliates. OPM is not adopting the proposed regulations and will retain a slightly modified version of the existing regulatory language as its final rule. OPM has modified section 950.401(i) to clarify that local chapters/affiliate organizations must satisfy CFC eligibility criteria and must independently demonstrate services and accountability through the submission of independent documentation as required in sections 950.202, 950.203 or 950.204, except that a chapter or affiliate that is part of a single corporation or part of a group exemption may rely on the 26 U.S.C. 501(c)(3) tax-exempt determination and

the audited financial statements for the national organization, but must submit page 1 and Part V of a pro forma IRS Form 990 used to calculate the AFR.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. Streamlining these standards will be less burdensome.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations, and Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,
Director

■ Accordingly, OPM amends 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

■ 1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

■ 2. Amend part 950 as follows:

- a. Remove the words “brochure” and “brochures” and add in their place “Charity List” and “Charity Lists”, respectively, wherever they appear;
- b. Remove the words “card” and “cards” and add in their place “form” and “forms”, respectively, wherever they appear; and
- c. Remove the words “materials”, “pamphlet”, and “pamphlets” and add in their place “information” wherever they appear.

■ 3. In § 950.101:

- a. Remove the definition of *Campaign Year*;

- b. Add the definitions of *Campaign Period*, *Charity List*, and *Independent Organization* in alphabetical order; and
- c. In the definition of *International General Designation Option* remove the word “campaign”.

The additions read as follows:

§ 950.101 Definitions.

* * * * *

Campaign Period means generally a 24 month period beginning with the selection of a Principal Combined Fund Organization (PCFO) or renewal of the existing PCFO's agreement with a Local Federal Coordinating Committee (LFCC) and ending with the final disbursements to charitable organizations participating in a local campaign.

Charity List means the official list of charities approved by OPM and the LFCC for inclusion in the CFC within a given geographic solicitation area. The Charity List will consist of three parts: the National/International part, the International part, and the Local part. Organizations that provide services, benefits, assistance, or program activities in 15 or more different states or a foreign country can choose to be listed on either the International or National/International part, except for members of a federation, which must be listed with the federation. Organizations that provide services, benefits, assistance, or program activities in 15 or more different states but no foreign countries will be listed on the National/International part. All qualifying local organizations within a CFC geographic solicitation area will be listed on the Local part associated with the campaign for that local CFC area.

* * * * *

Independent Organization means a charitable organization that is not a member of a federation for the purposes of the Combined Federal Campaign.

* * * * *

■ 4. In § 950.102 amend paragraph (a) by removing the text “6 week” from the second sentence, and amend paragraph (c) by adding two sentences at the end of the paragraph to read as follows:

§ 950.102 Scope of the Combined Federal Campaign.

* * * * *

(c) * * * OPM has the authority to audit, investigate, and report on the administration of any campaign, the organization that administers the campaign, and any national, international and local federation, federation member or independent organization that participates in the campaign for compliance with these regulations. The Director resolves any

issues reported and determines sanctions or penalties, as warranted under § 950.603.

* * * *

- 5. In § 950.103, revise paragraphs (f), (g) and (h) to read as follows:

§ 950.103 Establishing a local campaign.

* * * *

(f) Each year the LFCC must establish the time period during which CFC solicitation may take place. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. Contractor personnel, credit union employees and other persons present on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. These non-Federal personnel may not be solicited, but donations offered by such persons must be accepted by the local campaigns.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC. This restriction may be discontinued upon implementation of appropriate electronic technology that allows removal of the need for geographic restrictions on giving as determined by the Director. Upon a showing of extraordinary circumstances, as determined in the sole discretion of the Director, Federal employees may contribute in support of victims in cases of emergencies and disasters defined in § 950.102(a) outside the geographic boundaries of their participating CFC. Such contributions can be check, money order, or cash or by electronic means, including credit cards, as approved by the Director, but shall not be made through payroll deduction.

- 6. Amend § 950.104 as follows:

- a. In paragraphs (b)(4) and (b)(5), remove the word "local"; and

- b. Revise paragraphs (b)(6) and (c) to read as follows:

The revisions read as follows:

§ 950.104 Local Federal Coordinating Committee responsibilities.

* * * *

(b) * * *

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. CFC loaned executives' time should be charged to regular working hours. It is not appropriate to place a CFC loaned executive on administrative leave, leave without pay, or annual leave. Federal loaned executives are prohibited from working on non-CFC fundraising activities during duty hours.

* * * *

(c) The LFCC must select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the LFCC as described in § 950.105(c). The LFCC may, in its discretion, select a PCFO to serve in that role for up to three campaign periods, subject to renewal each year following a review of performance as defined in § 950.105. The LFCC must consider the capacity of the organization to manage an efficient and effective campaign, its history of public accountability, use of funds, truthfulness and accuracy in solicitations, and sound governance and fiscal management practices as the primary factors in selecting a PCFO. The LFCC must solicit applications on a competitive basis for the PCFO no later than a date to be determined by OPM and, if the LFCC exercises discretion to enter into a multi-year arrangement, upon completion of the multi-year term. The LFCC shall solicit applications via outreach activities including: Public notice in newspapers, postings on Web sites, advertising in trade journals, dissemination among participating CFC organizations and federations, and/or outreach through local or state nonprofit associations and training centers, among others. The PCFO application period must be open a minimum of 21 calendar days. Costs incurred for soliciting applications must be added to the PCFO budget as an administrative cost.

§ 950.105 [Amended]

- 7. Amend § 950.105 as follows:

- a. In paragraph (b), remove the word "printed" in the second sentence and add in its place the word "developed";

- b. In paragraph (d)(3), remove the word "address" and add in its place "contact information";

- c. In paragraph (d)(6), add the text "contact information and contribution amounts" after the word "names";

- d. In paragraph (d)(10), remove the word "reprinting" and add in its place "reproduction and/or reissuing" and remove the number "10" and add in its place "110"; and

- e. Remove paragraph (e).

§ 950.106 [Amended]

- 8. In § 950.106, amend paragraph (a) by removing the number "10" and adding in its place "110."

§ 950.109 [Amended]

- 9. In § 950.109, amend the first sentence by adding the words "serve in any official capacity in any organization that serves as the PCFO of the local CFC, or" before the word "participate".

- 10. Amend § 950.201 as follows:

- a. Revise the section heading;

- b. Revise paragraphs (a)(1) through (c)(3).

The amendments to § 950.201 read as follows:

§ 950.201 National/international eligibility.

(a) * * *

(1) Determine the timetable and other procedures regarding application for inclusion in the National/International and International parts of the Charity List.

(2) Determine which organizations among those that apply qualify to be included in the National/International and International parts of the Charity List and then provide these parts of the Charity List of qualified organizations to all local campaigns. In order to determine whether an organization may participate in the campaign, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the organization has demonstrated, to the Director's satisfaction, that the organization has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the Director's request for information within 10 business days of the date of the request may result in a determination that the organization will not be included in the Charity List.

(b) The National/International and International parts of the Charity List shall be included in the Charity List in accordance with these regulations. The Charity List will include each organization's CFC code and other information as determined by OPM. These CFC codes must be verbatim reproduced in the Charity List.

(c) An organization on the National/International or International parts of the Charity List may elect to be removed from the applicable part of the Charity List and have its local affiliate or subunit listed on the Local part of the Charity List of organizations in its stead. For the local affiliate or subunit to be

listed in lieu of the organization on the National/International or International parts, the following procedures must be followed:

(1) The organization must send a letter to the local affiliate or subunit in that particular geographic CFC, waiving its listing on the National/International or International part of the Charity List so that its eligible local affiliate or subunit listed in the Local part of the Charity List in that geographic CFC will appear as that organization's sole listing in the Charity List.

(2) The local affiliate or subunit will include in its application to the LFCC a copy of the letter authorizing the removal of the organization from the National/International or International part of the Charity List, as well as all the required materials for completing a local organization application.

(3) Upon finding the local organization eligible, the waiver letter from the organization on the National/International or International part authorizes the LFCC to delete that organization from the National/International or International part of the Charity List.

■ 11. Revise § 950.202 to read as follows:

§ 950.202 National/international eligibility requirements.

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an "800" telephone number or by disseminating information and publications via the U.S. Postal Service, the internet, or a combination thereof. A schedule listing a detailed description of the services in each state (minimum 15) or foreign countries (minimum 1), including the year of service, must be included with the CFC application. The schedule must make a clear showing of national or international presence. Broad descriptions of services and identical repetitive narratives will not be accepted in the sole discretion of OPM if they do not allow OPM to adequately determine that real services were provided or to accurately determine the individuals or entities who benefited. Providing listings of affiliated groups does not sufficiently demonstrate provision of real services by the applicant. Location of residence of organization members or location of residence of visitors to a facility does not substantiate provision of services.

Organizations that issue student scholarships or fellowships must indicate the state in which the recipient resides, not the state of the school or place of fellowship. Mere dissemination of information does not demonstrate acceptable provision of real services. While it is not expected that an organization maintain an office in each state or foreign country, a clear showing must be made of the actual services, benefits, assistance or activities provided in each state or foreign country. De minimis services, benefits, assistance, or other program activities in any state or foreign country will not be accepted as a basis for qualification as a national or international organization.

(b) Certify that it is an organization recognized by the Internal Revenue Service as tax exempt under 26 U.S.C. 501(c)(3) to which contributions are deductible under 26 U.S.C. § 170(c)(2) and that the organization is further classified as a public charity under 26 U.S.C. § 509(a). A copy of the letter(s) from the Internal Revenue Service granting tax exempt and public charity status must be included in the organization's application.

■ 12. Amend § 950.203 as follows:

- a. Remove paragraphs (a)(9) through (a)(11), and (a)(13) and redesignate paragraph (a)(12) as (a)(9);
- b. In paragraph (a) introductory text, remove the words "national list" in the first sentence;
- c. In paragraph (a)(1), remove the second sentence;
- d. Revise paragraphs (a)(2) through (a)(4); and
- e. In the newly redesignated paragraph (a)(9), remove the phrase "national list" and add the phrase "Charity List" in its place.

The revisions read as follows:

§ 950.203 Public accountability standards.

(a) * * *

(2) Certify that it accounts for its funds on an accrual basis (cash, modified cash, modified accrual and any other methods of accounting are not acceptable) in accordance with generally accepted accounting principles and that an audit of its fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the organization's most recent annual audited financial statements must be included with the application. The audited financial statements must cover the fiscal period ending not more than 18 months prior to the January of the year of the campaign for which the organization is applying. For example,

the audited financial statements included in the 2007 application must cover the fiscal period ending on or after June 30, 2005.

(3) Certify that it prepares and submits to the IRS a complete copy of the organization's IRS Form 990 or that it is not required to prepare and submit an IRS Form 990 to the IRS. Provide a completed copy of the organization's IRS Form 990 submitted to the IRS covering a fiscal period ending not more than 18 months prior to the January of the year of the campaign for which the organization is applying, including signature, supplemental statements and Schedule A, with the application, or if not required to file an IRS Form 990, provide a pro forma IRS Form 990 page 1 and Part V only. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes. The IRS Form 990 and audited financial statements must cover the same fiscal period.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990 submitted pursuant to § 950.203(a)(3).

* * * * *

■ 13. Amend § 950.204 as follows:

- a. Revise the section heading;
- b. In paragraphs (a) and (b) introductory text, remove the word "local";
- c. Revise paragraph (b)(1);
- d. Revise paragraph (b)(2)(ii) and (b)(2)(iii);
- e. Revise paragraph (e);
- f. In paragraph (f), remove the word "print" from the first sentence and add in its place "produce" and remove the word "campaign" from the first sentence the first time it appears; and
- g. Add new paragraph (g).

The revisions and addition read as follows:

§ 950.204 Local eligibility.

* * * * *

(b) * * *

(1) An organization must demonstrate to the satisfaction of the LFCC of the appropriate local campaign, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence. Eligibility to participate in an adjoining campaign on the basis of adjacency or statewide presence may be discontinued upon implementation of appropriate electronic technology that allows removal of the need for geographic

restrictions on giving as determined by the Director.

(i) Substantial local presence is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an "800" telephone number, the internet, the U.S. Postal Service or a combination thereof.

(ii) An adjacent local campaign is defined as a local campaign whose geographic border touches the geographic border of another local campaign. Participation in a local campaign via an adjacency determination does not grant the organization a substantial local presence in the adjacent local campaign and participating via adjacency cannot be used to establish adjacency to local campaigns bordering the adjacent campaign area.

(iii) Substantial statewide presence is defined as providing or conducting real services, benefits, assistance or program activities covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an "800" telephone number, the internet, the U.S. Postal Service or a combination thereof.

(2) * * *

(ii) A local charitable organization with annual revenue of less than \$100,000 reported on its IRS Form 990 or pro form IRS Form 990 submitted to the CFC is not required to undergo an audit or to submit audited financial statements. Rather, the organization must certify that it has controls in place to ensure that funds are properly accounted for and that it can provide accurate and timely financial information to interested parties. A local organization with annual revenue of at least \$100,000 but less than \$250,000 must certify that it accounts for its funds on an accrual basis in accordance with generally accepted accounting principles and that an audit of its fiscal operations is completed annually as described in section 950.203(a)(2), but such organization does not have to submit a copy of its audited financial statements with its CFC application, unless requested to do so by the LFCC or Director.

(iii) An organization seeking local eligibility in Puerto Rico, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, or Guam is exempt from the requirements of § 950.202(b), but the organization must include with its CFC application the appropriate documentation from its governing authority demonstrating its status as a charitable organization.

* * * * *

(e) *Local eligibility determinations.* The LFCC shall communicate its eligibility decisions by a date to be determined by OPM as part of the annual timetable issued by the Director under § 950.801(b). Denial of the application by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt requested. Approvals may be sent via U.S. Postal Service regular first class mail. Applicants denied eligibility may appeal in accordance with § 950.205.

* * * * *

(g) In order to determine whether an organization may participate in the campaign, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The LFCC will decide whether the organization has demonstrated, to the LFCC's satisfaction, that the organization has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the LFCC's request for information within 10 business days of the date of the request may result in a determination that the organization will not be included in the local part of the Charity List.

§ 950.205 [Amended]

■ 14. In § 950.205, amend paragraph (c)(4) by removing the word "and" and adding to the end of the sentence the text "and supporting information to justify the reversal of the original decision".

■ 15. Amend § 950.301 as follows:

■ a. Revise the section heading and paragraph (a);

■ b. Revise paragraph (c);

■ c. In paragraph (d), remove the word "decertification" in the last sentence and add in its place the words "withdrawal of federation status";

■ d. In paragraph (e) introductory text, add the words "or international" after the word "national";

■ e. In paragraph (e)(1), remove the word "national list" and add the words "National or International part of the Charity List" in its place; and

■ f. Revise paragraph (e)(2).

The revisions read as follows:

§ 950.301 National and international federations eligibility.

(a) The Director may recognize national and international federations that conform to the requirements and are eligible to receive designations. The Director may from time to time place a moratorium on the recognition of national and international federations. In order to determine whether the Director will recognize a national or international federation, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the federation has demonstrated, to the Director's satisfaction, that the federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the Director's request for information within 10 business days of the date of the request may result in a determination that the federation will not be included in the Charity List.

* * * * *

(c) An organization may apply to the Director for inclusion as a national or international federation to participate in the CFC if the applicant has, as members of the proposed federation, 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202 and 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. A federation must re-establish eligibility each year, however only the applications of its new and former members that were not within the federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless additional member applications are requested by the Director.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements and public accountability standards contained in §§ 950.202 and 950.203. The federation can demonstrate that it has met the eligibility requirement in § 950.202(a) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's current term of office, and the board's meeting dates and locations for the year prior to the year of the campaign for which the organization is applying.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal period ending not more than 18 months prior to January of the campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

■ 16. Amend § 950.302 as follows:

- a. Revise the section heading;
- b. In paragraph (a), add the words "and international" after the word "National";
- c. Revise paragraph (c); and
- d. Remove paragraphs (d) and (e).

The revision reads as follows:

§ 950.302 Responsibilities of national and international federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of

each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member organization as compared to total campaign designations.

■ 17. Amend § 950.303 as follows:

- a. Revise paragraph (a);
- b. Revise paragraph (c);
- c. In paragraph (d), remove the word "decertification" in the last sentence and add in its place the words "withdrawal of federation status"; and
- d. Revise paragraph (e)(2).

The revisions read as follows:

§ 950.303 Local federations' eligibility.

(a) LFCC's must approve local federations that meet the applicable requirements, except that in order to determine whether the LFCC must recognize a local federation, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. A local federation that has been notified that it will not be included on the Local part of the Charity List because of failure to correct a prior violation may appeal the LFCC's decision to the Director in accordance with § 950.205(b). The Director retains the ultimate authority to decide whether the local federation has demonstrated, to the Director's satisfaction, that the local federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to a request by the LFCC or Director for information within 10 business days of the date of the request may result in a determination that the local federation will not be included in the Local part of the Charity List.

(c) An organization may apply to the LFCC for inclusion as a local federation to participate in the CFC if the applicant has as members of the proposed federation 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202, 950.203 and 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. A federation must re-establish eligibility each year, however only the applications of its new and former members that were not within the federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless

additional member applications are requested by the LFCC.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements contained in § 950.204 (including eligibility requirements and public accountability standards of §§ 950.202 and 950.203 that are incorporated by reference). The federation can demonstrate that it has met the eligibility requirement in § 950.204(b)(1) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's current term of office, and the board's meeting dates and locations for the year prior to the year of the campaign for which the organization is applying.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal year ending not more than 18 months prior to January of the campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

■ 18. In § 950.304, revise paragraph (c) and remove paragraphs (d) and (e) to read as follows:

§ 950.304 Responsibilities of local federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member organization as compared to total campaign designations.

■ 19. Amend § 950.401 as follows:

■ a. In paragraph (a), remove the word “printed” in the second sentence and add in its place “developed”;

■ b. In the first sentence of paragraph (e), add the words “source of” after the word “official”, remove the word “package”, and add the words “either in hard copy or electronic format” after the word “available”;

■ c. In paragraph (f), remove the word “package” in the first and second sentences and add in its place “design”;

■ d. Revise the introductory paragraph of (g)(1);

■ e. Revise paragraphs (g)(2) through (j); and

■ f. In paragraph (k), remove the word “year” and add in its place “period”, and add to the end of the sentence the text “or if the LFCC can demonstrate to the satisfaction of the Director that it can make the same information available electronically without disrupting donor opportunities to contribute.”

The revisions read as follows:

§ 950.401 Campaign and publicity information.

* * * * *

(g) * * *

(1) OPM will include in the annual distribution of the National/International and International parts of the Charity List explicit instructions for the production of the Charity List and language to be reproduced verbatim in the introductory section. The general information provided will include:

* * * * *

(2) Following the introductory section, the Charity List will consist of three parts—the National/International, the International, and the Local. The order of these three parts will be annually rotated in accordance with OPM instructions. The National/International and International parts

will consist of faithful reproductions of the parts of National/International and International organizations, including federations, provided by OPM. The third part, the Local part, is determined by the LFCC. The order of listing of the federated and independent organizations within the three separate parts will be determined by random drawing. The order of organizations within each federation will be determined by the federation. The order within the National/International, International and Local independent groups will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of its services and programs, plus a telephone number for the Federal donor to request further information about the group’s services, benefits, and administrative expenses. Each listing will include the organization’s administration and fundraising percentage as calculated pursuant to § 950.203(a)(4). Neither the percentage of administrative and fundraising expenses, nor the telephone number count toward the 25-word statement.

(3) Each federation and charitable organization will be assigned a code in a manner determined by the Director. At the beginning of each federated group’s listing will be the federation’s name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the Charity List where the independent organizations are listed will begin with the titles National/International Independent Organizations, International Independent Organizations and Local Independent Organizations, respectively.

(h) Omission of an eligible charitable organization from the Charity List may require that the Charity List be corrected and reissued. Such an omission must be reported to OPM immediately upon discovery. The Director or LFCC may direct that the cost of such correction and reissue be borne by the PCFO or charged to CFC administrative expenses.

(i) *Listing of National and Local Affiliate.* Listing of a national organization, as well as its local affiliate organization, is permitted. Each national or local organization must individually meet all of the eligibility criteria and submit independent documentation as required in § 950.202, § 950.203 or § 950.204 to be included in the Charity List, except that a local affiliate of a national organization that is not separately incorporated, in lieu of its own 26 U.S.C. 501(c)(3) tax exemption

letter and, to the extent required by § 950.204(b)(2)(ii), audited financial statements, may submit the national organization’s 26 U.S.C. 501(c)(3) tax exemption letter and audited financial statements, but must provide its own pro forma IRS Form 990, page 1 and Part V only, for CFC purposes. The local organization must submit a certification from the Chief Executive Officer (CEO) or CEO equivalent of the national organization stating that it operates as a bonafide chapter or affiliate in good standing of the national organization and is covered by the national organization’s 26 U.S.C. 501(c)(3) tax exemption, IRS Form 990 and audited financial statements. A national organization may waive its listing in the National/International or International parts of the Charity List in favor of its local affiliate by following the procedures set forth in § 950.201(c).

(j) *Multiple Listing Prohibited.* Except as provided in paragraph (i) of this section, once an organization is deemed eligible, it is entitled to only one listing in the Charity List, regardless of the number of federations to which that organization belongs.

* * * * *

■ 20. Amend § 950.402 as follows:

■ a. In paragraph (a), remove the word “year” and add in its place “period”;

■ b. In paragraph (c), add to the end of the second sentence the text “, except in cases of emergencies or disasters as approved by the Director”, and add a new third sentence; and

■ c. In paragraph (d), revise the last sentence.

The addition and revision read as follows:

§ 950.402 Pledge Form.

* * * * *

(c) * * * This restriction does not apply upon implementation of electronic technology that removes the geographic restrictions on giving as announced by the Director.

(d) * * * For example, if an employee indicates a total gift of \$100 on the pledge form, but designates \$50 to one organization and \$25 to each of three other organizations, the PCFO must adjust the pledges proportionately by entering a pledge of \$40 to the first organization and \$20 to each of the three other organizations.

§ 950.403 [Removed]

■ 21. Remove § 950.403.

■ 22. Revise § 950.601 to read as follows:

§ 950.601 Release of contributor information.

(a) The pledge form, designed pursuant to § 950.402, must allow a contributor to indicate if the contributor does wish his or her name, contribution amount, and home contact information forwarded to the charitable organization or organizations designated. A PCFO's failure to honor a contributor's wish may result in the PCFO being sanctioned or penalized as provided for in § 950.603(a).

(b) The pledge form shall permit a contributor to specify which information, if any, he or she wishes released to organizations receiving his or her donations.

(c) It is the responsibility of the PCFO to forward the contributor information for those who have indicated that they wish this information released to the recipient organization directly, if the organization is independent, and to the organization's federation if the organization is a member of a federation. The PCFO may not sell or make any other use of this information.

■ 23. In § 950.602, revise paragraph (b) to read as follows:

§ 950.602 Solicitation methods.

* * * * *

(b) Special CFC fundraising events, such as raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations. CFC special fundraising events should be undertaken in the spirit of generating interest in the CFC and be open to all individuals without regard to whether an individual participates in the CFC. Chances to win must be disassociated from amount of contributions, if any. Raffle prizes should be modest in nature and value. Examples of appropriate raffle prizes may include opportunities for lunch with Agency Officials, agency parking spaces for a specific time period, and gifts of minimal financial value. Any special CFC fundraising event and prize or gift should be approved in advance by the Agency's ethics official.

* * * * *

■ 24. In § 950.603, revise the section heading and paragraph (a) to read as follows:

§ 950.603 Sanctions and penalties.

(a)(1) The Director may impose sanctions or penalties on a federation, charitable organization or PCFO for

violating these regulations, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction and/or penalty, up to and including expulsion from the CFC. In determining the appropriate sanction and/or penalty, the Director will consider previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director may bar a federation or charitable organization from serving as PCFO, for a period not to exceed one campaign period, if it is determined that the federation or charitable organization has violated any provisions of these regulations. A federation, charitable organization or PCFO will be notified in writing of the Director's intent to sanction and/or penalize and will have 10 business days from the date of receipt of the notice to submit a written response. The Director's final decision will be communicated in writing to the federation, charitable organization, or PCFO, with a copy to the appropriate LFCC.

(2) The Director may withdraw federation status with respect to a national, international or local federation that makes a false certification or fails to comply with any directive of the Director, or to respond in a timely fashion to a request by the Director or LFCC for information or cooperation, including with respect to an investigation or in the settlement of disbursements. The LFCC may recommend the withdrawal of federation status with respect to a local federation. As stated in §§ 950.301(d) and 950.303(d), failure to meet minimum federation eligibility requirements shall not be deemed to be a withdrawal of federation status subject to a hearing on the record. Eligibility decisions shall follow the procedures in §§ 950.301(f) and 950.303(f). A federation will be notified in writing of the Director's intent to withdraw federation status for a period of up to one campaign period and will have 10 business days from the date of receipt of the notice to submit a written response. On receipt of the response, or in the absence of a timely response, the Director or representative shall set a date, time, and place for a hearing. The federation shall be notified at least 10 business days in advance of the hearing. A hearing shall be conducted by a hearing officer designated by the Director unless it is waived in writing by the federation. After the hearing is held, or after the Director's receipt of the federation's written waiver of the hearing, the Director shall make a final

decision on the record, taking into consideration the recommendation submitted by the hearing officer. The Director's final decision will be communicated in writing to the federation, with a copy to the appropriate LFCC.

(3) A federation, charitable organization or PCFO sanctioned or penalized under any provision of these regulations must demonstrate to the satisfaction of the Director that it has taken corrective action to resolve the reason for sanction and/or penalty and has implemented reasonable and appropriate controls to ensure that the situation will not occur again prior to being allowed to participate in subsequent CFCs and/or serving as a PCFO for a campaign.

* * * * *

■ 25. Revise § 950.604 to read as follows:

§ 950.604 Records retention.

Federations, PCFOs and other participants in the CFC shall retain documents pertinent to the campaign for at least three completed campaign periods. For example, documentation regarding the 2006 campaign must be retained through the completion of the 2007, 2008 and 2009 campaign periods (*i.e.* until early 2011). Documents requested by OPM must be made available within 10 business days of the request.

■ 26. Amend § 950.801 as follows:

■ a. Revise paragraphs (a)(1) through (4); and

■ b. In paragraph (b), add the words "and international" in the first sentence after the word "national", and add a new second sentence.

The revisions and addition read as follows:

§ 950.801 Campaign schedule.

(a) * * *

(1) During a period between December and January, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the National/International and International parts of the Charity List.

(2) The Director will determine a date after the closing of the receipt of applications by which the Director will issue notices to each national and international applicant organization of the results of the Director's review. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(3) Local Federal Coordinating Committees must select a PCFO no later than a date to be determined by OPM. The date will be part of the annual

timetable issued by the Director under § 950.801(b).

(4) The Director will issue the National/International and International parts of the Charity List to all local campaigns by a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).

* * * * *

(b) * * * The Director will issue the timetable for a campaign period no later than October 31 of the year preceding the campaign period.

■ 27. Amend § 950.901 as follows:

■ a. In paragraph (c)(1), remove the text “printed or purchased from a central source” and add in its place “reproduced”, and remove the word “distributed” and add in its place “made available”;

■ b. In paragraph (c)(2), add the word “paper” after the word “each”, and add the text “or an acceptable electronic version” after the word “authorization”;

■ c. In paragraph (f)(1), add the text “pay period number,” after the word “period,”; and

■ d. Revise paragraphs (i)(1) and (i)(2);

The revisions read as follows:

§ 950.901 Payroll allotment.

* * * * *

(i) * * *

(1) The PCFO shall notify the federations, national and international organizations, and local organizations as soon as practicable after the completion of the campaign, but in no case later than a date to be determined by OPM, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds,

if any, allocated to them. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit disbursements at least quarterly, minus the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106. It shall remit the contributions to each organization or to the federation, if any, of which the organization is a member. The PCFO will distribute all CFC receipts beginning April 1, and quarterly thereafter. At the close of each disbursement period, the PCFO’s CFC account shall have a balance of zero.

* * * * *