

## **§ 1225.5**

be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in subpart C.

### **§ 1225.5 Representation.**

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances;

(a) *Informal adjustment of a complaint.* An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EEOP Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the CEO, or their designee, in the manner detailed in § 1225.11.

(b) *Final agency decision.* When discrimination is found, the CEO, or their designee, shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under § 1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the CEO, or their designee, in his or her final decision shall set forth the specific reasons thereof.

### **§ 1225.6 Freedom from reprisal.**

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in § 1225.8, or any time thereafter.

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### **§ 1225.7 Review of allegations of reprisal.**

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in subpart B or that the allegation be considered as an issue in the complaint at hand.

## **Subpart B—Processing Individual Complaints of Discrimination**

### **§ 1225.8 Precomplaint procedure.**

(a) An aggrieved person who believes that he or she has been subject to illegal discrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. Aggrieved applicants, candidates, members, and volunteers applying for, or enrolled in programs operated by CNCS, or by recipients or subrecipients of CNCS assistance or resources, shall direct their allegations to the designated counselor.

(b) Upon receipt of the allegation, the counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The counselor will keep a written record of his or her activities which will be submitted to the EEOP Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EEOP Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed

once the agency has accepted a complaint of discrimination from the aggrieved party.

**§ 1225.9 Complaint procedure.**

(a) The EEOP Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein:

(1) When the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or

(2) The complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or

(3) For other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EEOP Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in § 1225.8 or is cancelled, the EEOP Director shall inform the aggrieved party in writing of this final agency decision: That CNCS will take no further action; and of the right, to file a civil action as described in § 1225.21.

(b) Upon acceptance of the complaint and receipt of the counselor's report, the EEOP Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EEOP Director and shall provide the complainant with a copy.

(c) The EEOP Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided to the complainant. If the proposed adjustment of the complaint is not acceptable to the complainant, or the EEOP Director determines that such an offer is inappropriate, the EEOP Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendations of the proposed disposition of the complaint to the CEO or their designee. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the CEO or their designee. Within ten (10) calendar days of receipt of such notice the complainant may submit his or her appeal of the recommended disposition to the CEO or their designee.

(d) If no timely notice of appeal is received from the aggrieved party, the CEO or their designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the CEO, or a designee who has been delegated authority to issue such a decision, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the CEO, or their designee, shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in § 1225.21, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

**§ 1225.10 Corrective action.**

When it has been determined by final agency decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

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(a) Selection as a member or volunteer for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to national service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a member or volunteer will be placed in the same position previously held. However, reassignment to the specific position previously held is contingent on several programmatic considerations such as the continued availability of the position. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional commitment to national service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the CEO or their designee.

### **§ 1225.11 Amount of attorney fees.**

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the CEO or their designee. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit,

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the CEO or their designee shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: The time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

### **Subpart C—Processing Class Complaints of Discrimination**

#### **§ 1225.12 Precomplaint procedure.**

An applicant, candidate, member or volunteer who believes that he or she is among a group of present or former CNCS national service applicants, candidates, members or volunteers, who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in § 1225.8.

#### **§ 1225.13 Acceptance, rejection or cancellation of a complaint.**

(a) Upon receipt of a class complaint, the counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EEOP Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in