

### § 1220.3-3

Corporation for National and Community Service grant; and

(c) The conditions specified in § 1220.3-1(b) and (c) are met.

[80 FR 63458, Oct. 20, 2015]

#### § 1220.3-3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making a party to any proceeding covered under § 1220.3-1 or § 1220.3-2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate Corporation for National and Community Service state office. The procedures referred to in § 1220.3-3(c) through (e) shall thereafter be followed as appropriate.

[80 FR 63459, Oct. 20, 2015]

## PART 1222 [RESERVED]

## PART 1225—MEMBER AND VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

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AUTHORITY: 42 U.S.C. 5057(d), 12635(d), and 12651(c).

SOURCE: 86 FR 30174, June 7, 2021, unless otherwise noted.

### Subpart A—General Provisions

#### § 1225.1 Purpose.

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, disability or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of AmeriCorps and AmeriCorps Seniors applicants, candidates, Members and Volunteers for part time and full time service, as appropriate.

#### § 1225.2 Policy.

It is the policy of the Corporation for National and Community Service (CNCS) to provide equal opportunity in all its national service programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, disability or political affiliation in the recruitment, selection, placement, service, and termination of AmeriCorps and AmeriCorps Seniors applicants, candidates, Members and Volunteers. It is the policy of CNCS, upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

#### § 1225.3 Definitions.

Unless the context requires otherwise, in this part:

*Agent* means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in § 1225.3, the complaint must meet the requirements for a class complaint as found in subpart C of this part.

*AmeriCorps member* means a person who serves in a national service position for which a Segal AmeriCorps Education Award could be provided.

*AmeriCorps Seniors Volunteer* means a person who serves as a volunteer

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through a program funded under Title II of the DVSA, including the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program.

*Applicant* means a person who has submitted a completed application required for consideration of eligibility for CNCS national service as a member or volunteer. *Applicant* may also mean a person who alleges that the actions of recipient or subrecipient organization staff, or agency personnel precluded him or her from submitting such an application or any other information reasonably required by CNCS as necessary for a determination of the individual's eligibility for national service.

*Candidate* means a person who has accepted an offer to commence service as a member or volunteer but has not yet enrolled for service in a CNCS national service program.

*CEO* means the Chief Executive Officer of CNCS. The term shall also refer to any designee of the CEO.

*Complaint* means a written statement signed by the complainant and submitted to the EEOP Director. A complaint shall set forth specifically and in detail:

(1) A description of the management policy or practice during the application stage as an applicant, during the candidacy stage as a candidate, or during the service stage as a member or volunteer, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of CNCS, recipients or subrecipients of CNCS assistance or resources, or the officials of those recipients or subrecipients, which resulted in the alleged illegal discrimination;

(3) The manner in which the action of CNCS, or the CNCS recipient or subrecipient, directly affected the complainant; and

(4) The relief sought.

(5) A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The

complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

*Counselor* means an official designated by the EEOP Director to perform the functions of conciliation as detailed in this part.

*EEOP Director* means the Director of the Equal Employment Opportunity Program of CNCS. The term shall also refer to any designee of the EEOP Director.

*Illegal discrimination* means discrimination on the basis of race, color, national origin, religion, age, sex, disability or political affiliation as defined in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, *et seq.*); the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Section 175 of the National and Community Service Act of 1990, as amended, and Section 5057 of the Domestic Volunteer Service Act of 1973, as amended. Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR part 1604; Religious Discrimination: 29 CFR part 1605; National Origin Discrimination: 29 CFR part 1606; Age Discrimination: 45 CFR part 90; Disability Discrimination: 29 CFR part 1630.

**§ 1225.4 Coverage.**

(a) These procedures apply to all CNCS national service applicants, candidates, members and volunteers throughout their term of service with CNCS, or with recipients and subrecipients of CNCS assistance or resources. When an applicant, candidate, member or volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would be otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this part. At the discretion of the EEOP Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to

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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

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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

the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the counselor's report, the EEOP Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the counselor. If the explanation is not satisfactory, the EEOP Director may decide to reject the allegation. If the explanation is not satisfactory, the EEOP Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EEOP Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EEOP Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EEOP Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EEOP Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or

that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EEOP Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section than shall be construed and applied accordingly.

(f) The EEOP Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EEOP Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) Within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EEOP Director in a request under paragraphs (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

#### **§ 1225.14 Consolidation of complaints.**

The EEOP Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which had been resolved or decided by the agency.

#### **§ 1225.15 Notification and opting out.**

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain:

(1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and

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(4) An explanation of the binding nature of the final decision or resolution of the complaint.

**§ 1225.16 Investigation and adjustment of complaint.**

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in 1225.9 of this part shall apply.

**§ 1225.17 Agency decision.**

(a) If an adjustment of the complaint cannot be made, the procedures outlined in 1225.9 shall be followed by the EEOP Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The final agency decision on a class complaint shall be binding on all members of the class.

**§ 1225.18 Notification of class members of decision.**

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the Agency within ten (10) calendar days of the transmittal of its decision to the agent.

**§ 1225.19 Corrective action.**

(a) When discrimination is found, CNCS, or the recipient or subrecipient of CNCS assistance or resources, as appropriate, must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with § 1225.10.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a member or volunteer or received some other volunteer service benefit, the class member may file a written claim with the EEOP Director within thirty (30) calendar days of notification by the agency of its decision.

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endar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The Agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EEOP Director.

**§ 1225.20 Claim appeals.**

(a) If the EEOP Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EEOP Director shall refer the claim, with recommendations concerning it, to the CEO or their designee for a Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the CEO or their designee concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The CEO or their designee shall decide the issue within thirty (30) days of the date of referral by the EEOP Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision of the issue.

**§ 1225.21 Judicial review.**

(a) An applicant, candidate, member or volunteer is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of the notice of final action taken by the agency; or

(2) After one hundred eighty (180) calendar days from the date of filing a formal discrimination complaint with the agency if there has been no final agency action.