

MS 271 Confidentiality Protection Procedures

1.0 Purpose

The procedures for processing Volunteer and Trainee (collectively “Volunteer(s)”) allegations of retaliation based upon Volunteers having filed reports under MS 271 are set forth in this procedural handbook.

2.0 Procedures

2.1 Reporting reprisal to the OCRD Director

Volunteers who believe that they have been subjected to retaliation— because they have reported misconduct or cooperated with a duly authorized audit or investigation within the meaning of the policy stated in this manual section—should forward all information and documentation available to them to support their complaint to the Director of the Office of Civil Rights and Diversity (OCRD) as soon as possible. Complaints may be made in person, by regular mail or by e-mail, by fax, or by telephone.

2.2 The functions of the OCRD Director

The functions of the OCRD Director with respect to protection against retaliation for reporting misconduct or cooperating with a duly authorized audit or investigation are as follows:

- (a) To receive complaints of reprisal or threats of retaliation;
- (b) To keep a confidential record of all complaints received;
- (c) To conduct a preliminary review of the complaint to determine if, based on substantial evidence (i) the complainant engaged in a protected activity, and (ii) there is some indication that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

2.3 Time Limits

The OCRD Director will seek to complete a preliminary review within 15 days of receiving the complaint of reprisal.

2.4 Responsibilities of Offices, Staff Members, and Volunteers

All offices, staff members and Volunteers shall cooperate with the OCRD Director and provide access to all records and documents requested by the OCRD Director, except for medical records which are not available without the express consent of the staff member or Volunteer concerned and records that are subject to confidentiality requirements.

2.5 Referral for Investigation

If the OCRD Director finds that, based on substantial evidence, there is a credible case of retaliation or threat of retaliation, the OCRD Director will refer the matter in writing for investigation by a designated neutral staff member or outside investigator and will immediately notify the complainant in writing that the matter has been so referred. Any investigation shall be completed, and a final report of the investigation submitted to the OCRD Director within 45 days of receiving the complaint of retaliation.

2.5.1 Burdens of Proof

In conducting an investigation, once there is evidence of an action taken, or threatened to be taken, regarding a Volunteer who has previously made reports within the meaning of MS 271 Section 3(a)-(c), the Peace Corps shall have the burden of proof, rather than the Volunteer who alleges retaliation after reporting misconduct to management. Specifically, if a Volunteer can show that he or she was subject to action adverse to him or her after reporting wrongdoing, the Peace Corps must show by clear and convincing evidence that it would have taken the same action absent the reporting of wrongdoing. "Clear and convincing evidence" presented to the OCRD Director must be highly and substantially more probable to be true than not, and the OCRD Director must have a firm belief or conviction in its factuality.

2.6 Preliminary Relief and Safety Precautions

Pending the completion of the investigation, the OCRD Director may recommend that the Peace Corps Director take appropriate measures to safeguard the interests of the complainant, including but not limited to temporary suspension of the implementation of the action alleged to constitute retaliation and, with the consent of the complainant, temporary reassignment of the complainant within or outside the complainant's site or placement of the complainant on special leave.

2.7 OCRD Director Decision

Once the OCRD Director has received the investigation report, s/he will inform the complainant in writing of the outcome of the investigation and issue a decision on the case. The decision may include recommendations to the Office of Human Resource Management and/or the Office of Global Operations regarding disciplinary actions to be taken against the staff who retaliated.

2.8 Appeal

If the Volunteer is dissatisfied with the OCRD Director's decision, an appeal may be filed in writing with the Director within 15 days of the date the Volunteer is notified of the OCRD Director's decision. The appeal shall set out the grounds for the appeal, including the reasons why the Volunteer believes that the decision is erroneous. The Director will refer the appeal to the Chief Compliance Officer (CCO) together with the record of the case. The CCO shall notify the parties of the referral, review the record, receive any additional evidence needed, and issue a recommended decision to the Director within 30 days of the referral. If approved by the Director, such decision shall be binding on the Peace Corps and on the Volunteer with no further appeal.

2.9 Protection of the Volunteer who suffered reprisal

If reprisal against a Volunteer is established, the OCRD Director—or the Director in the case of an appeal—may, after taking into account any recommendations made by the investigator or other concerned office(s), and after consultation with the complainant who has suffered retaliation, direct the head of the department or office concerned to take appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action. Such measures may include, but are not limited to, the rescission of the decision and/or action which constituted reprisal, including reinstatement, or, if requested by the complainant, possible transfer to another country or site or program for which the complainant is qualified, in any event assuring that the complainant is not subject to the authority of the person who engaged in retaliation. In considering appropriate relief for a Volunteer who has suffered retaliation and been separated from service as a result, the presumption shall be that the Volunteer must be reinstated to the former position or, with the concurrence of the Volunteer, to a comparable position.

2.10 Protection of Other Rights

The procedures set out herein are without prejudice to the rights of a Volunteer who has suffered reprisal to seek redress through any other available means. A Volunteer may raise a violation of the present policy against retaliation in any such internal recourse proceeding.

3.0 Effective Date

These procedures will be effective upon issuance.