

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

PROGRAM INSTRUCTION	Number 17-PI-35
	Supersedes 17-PI-32
	Expiration Date

DATE: December 27, 2017

TO: Area Agency on Aging (AAA) Directors

SUBJECT: Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure

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ACTION REQUESTED: All AAAs that administer the Senior Community Service Employment Program (SCSEP) must replace their existing complaint resolution and grievance policy procedure using the NYSOFA policy on file with the U.S. Department of Labor (attached – titled “Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions). This includes all AAAs that administer SCSEP through NYSOFA funded authorized positions, whether it is done directly or through a contract.

All staff that work on SCSEP, including at the AAA, contractor (if applicable), and host sites are to be given a copy of the policy and receive education on it. Due to the complexity of this policy, NYSOFA devised a participant version (attached – titled “Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions: What You Need to Know”) to be given to all participants and placed in the participant handbook. The participant version contains all of the elements of the SCSEP Complaint and Grievance Policy Procedure but is in an easier to understand format using simpler language.

Due to the need for uniformity across all SCSEP authorized positions funded by NYSOFA, the policy and participant version cannot be modified. All programs must update the SCSEP participant handbook with the new participant version. Whatever mechanism is used to update the participant handbook, the new participant version

must be clearly and easily identifiable by the participant. A copy of the new participant version must also be distributed to all current participants. Host agencies should also receive a copy of the participant version in addition to the policy so that if requested by a participant, they are able to provide a copy of it. Additionally, any time a participant is switched from a National Grantee authorized position to a NYSOFA funded authorized position, a copy of the participant version (and any other NYSOFA funded authorized position specific documents) must be given to the participant. All new and current participants must sign that they have received a copy of the participant version and the signature must be retained in the participant file in accordance with SCSEP document retention guidelines.

If the AAA administers SCSEP through a contract, the AAA is responsible for determining what communication their contractor must provide the AAA related to the receipt of grievances/complaints.

As a reminder, a significant number or proportion of the population eligible to be served by SCSEP may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program. Make sure to consider the scope of the program and the size and concentration of the population that needs services or information in a language other than English. Based on those considerations, the program should take reasonable steps to provide services and information in appropriate languages. However, even if a significant number or proportion of the population is limited English proficient (LEP), you still need to make reasonable efforts to meet the particularized language needs of LEP individuals who seek services or information regarding SCSEP.

RESPONSE DUE DATE: All AAAs that administer SCSEP through NYSOFA funded authorized positions will have 60 days to update the participant handbook and provide a copy of the participant version to current participants and host agencies as directed above. Compliance with this PI will be verified during SCSEP monitoring visits.

PURPOSE: To transmit the SCSEP Complaint Resolution and Grievance Policy Procedure to all AAAs that administer SCSEP. This includes all AAAs that administer SCSEP through NYSOFA funded authorized positions, whether it is done directly or through a contract. SCSEP regulations require that all individuals who are dissatisfied with or denied services under Title V of the Older Americans Act be given the opportunity to file a complaint or grievance without fear of reprisal.

BACKGROUND: SCSEP was authorized by Congress in Title V of OAA of 1965 to provide subsidized, part-time, community service training for unemployed, low-income persons aged 55 or older who have low employment prospects. There are 29 SCSEP programs in NYS that are overseen by NYSOFA and operated directly by AAAs or contracted through other local entities.

Explanation of Terms

The following are terms found in the grievance policy procedure.

Nondiscrimination Requirements

Consumers, applicants, and participants of SCSEP are covered under the nondiscrimination requirements. If an individual believes that they have experienced discrimination while seeking or receiving SCSEP services, an individual has the right to file a complaint. Complaints alleging discrimination must not be handled by SCSEP staff. See Section A. of attachment 1 for more information.

Grantee

NYSOFA is the grantee as designated by the United States Department of Labor (USDOL).

Subgrantee

There are 29 AAAs that are designated as subgrantees by NYSOFA. Of those 29 AAAs, several contract out SCSEP to a local One Stop or other entity. The AAA (even if they contract out SCSEP) is responsible for ensuring that the requirements of this PI are fulfilled. However, in the complaint and grievance policy procedure, when “subgrantee SCSEP director” is referenced, this means the person who runs the day to day operations of SCSEP on the local level and could mean either an employee of the AAA or of the contractor, depending on how your program is set up.

Host Agency

A host agency is any location where a participant of SCSEP is placed for their community service assignment.

Violations of Law

Violations of law include both Title V specific violations as well as any other violation of state and/or federal law. Some examples of Title V violations include, but are not limited to, denying an eligible person participation in SCSEP when there is an available authorized position, using a SCSEP participant to displace a currently employed worker or one that has been laid off, paying a participant lower than minimum wage, or not assuring the health and safety of the working conditions.

Filing a Complaint

A participant has the right to choose whether they file their complaint verbally or in writing. If the participant chooses to file their complaint verbally, it is the responsibility of

the SCSEP director to implement a process to document the verbal complaint. If the participant chooses to put their complaint in writing, they have the choice of using a form provided by the program but are not required to do so.

The time frames indicated in the complaint and grievance policy procedure begin when the complaint is presented, not when action is first taken.

Fact Finding Mission

The SCSEP Director shall attempt to substantiate or refute the complaint by completing a fact finding mission. This should include speaking to all potential witnesses, reviewing any pertinent records (time sheets, etc.), and making observations for him/herself.

All steps of the complaint process should be documented by the SCSEP Director including, but not limited to, the fact finding mission.

Appeals

A participant may make an appeal when they are not satisfied with the outcome of the complaint resolution and grievance policy procedure at the subgrantee level. Please refer to Section D of the attached Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions for more information on filing an appeal.

ATTACHMENTS:

- Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions
- Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions: What You Need to Know (participant version)

PROGRAMS AFFECTED:

- | | | | | |
|--------------------------------------|--|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Title III-B | <input type="checkbox"/> Title III-C-1 | <input type="checkbox"/> Title III-C-2 | | |
| <input type="checkbox"/> Title III-D | <input type="checkbox"/> Title III-E | <input type="checkbox"/> CSE | <input type="checkbox"/> WIN | <input type="checkbox"/> Energy |
| <input type="checkbox"/> EISEP | <input type="checkbox"/> NSIP | <input checked="" type="checkbox"/> Title V | <input type="checkbox"/> HIICAP | <input type="checkbox"/> LTCOP |
| <input type="checkbox"/> Other: | | | | |

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Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions

As the SCSEP grantee, NYSOFA requires its subgrantees to address complaints and grievances brought about by SCSEP applicants or participants by adopting and implementing this procedure developed by NYSOFA. This policy applies exclusively to NYSOFA funded authorized positions.

A. Complaints or Questions Regarding Nondiscrimination Requirements

Subgrantee staff must refer to 17-PI-34 with respect to any complaints or questions regarding nondiscrimination requirements, or complaints alleging a violation of the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 188 of the Workforce Innovation and Opportunity Act (WIOA), or their implementing regulations. Any complaints alleging discrimination must not be handled by SCSEP staff.

B. Complaints or Questions Regarding a Violation of Law

A complaint alleging violation of law shall follow the process outlined below.

1. Complaints alleging a violation of law, including Title V of the Older Americans Act of 1965, which are not resolved in 30 days as a result of the complaint resolution and grievance policy procedure of the subgrantee (see Section C.), may be filed with the NYSOFA Office of the General Counsel, 2 Empire State Plaza, Fifth Floor, Albany, NY 12223.
2. Complaints alleging a violation of law, including Title V of the Older Americans Act of 1965, which are not resolved in 60 days as a result of the combined complaint resolution and grievance policy procedure of the subgrantee (see Section C.) and appeals process (see Section D.) may be filed with the Chief, Division of National Programs, Tools and Technical Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

C. All Other Complaints – Complaint Resolution and Grievance Policy Procedure

Below are the steps of the complaint resolution and grievance policy procedure. Specific time frames are indicated for the completion of each step, totaling 30 calendar days.

When a participant presents a verbal or written complaint/grievance, this invokes the subgrantee's complaint resolution and grievance policy procedures.

1. If the **complaint/grievance is against the host agency**, the person designated by the host agency to supervise SCSEP participants (host agency supervisor) must notify the subgrantee SCSEP director and provide a copy of the complaint/grievance immediately.
 - a. The complaint/grievance must be presented to the host agency supervisor. Upon receipt of a complaint/grievance, the subgrantee SCSEP director, the participant who filed the complaint/grievance, and the host agency supervisor should seek promptly to resolve the differences in an informal conference within seven (7) days.
 - b. If the complaint/grievance can be resolved during this meeting, the host agency supervisor shall provide written documentation of the resolution and submit the documentation to the participant, the host agency executive director, and the subgrantee SCSEP director for the participant within seven (7) days of the meeting.
 - c. If the complaint/grievance cannot be resolved during this meeting, the subgrantee SCSEP director shall schedule a formal meeting with the participant who filed the complaint/grievance, host agency supervisor, and host agency executive director within sixteen (16) days of the informal meeting.
 - i. The subgrantee SCSEP director shall undertake a fact finding mission including the collection of any other relevant information and written documentation related to the participant's complaint/grievance prior to the formal meeting.
 - ii. The subgrantee SCSEP director shall facilitate the meeting and render a decision in writing seven (7) days following the scheduled meeting. The decision, including the justification for the decision, shall be submitted in writing to the participant and the host agency executive director. A copy shall be maintained in the participant's file.
2. If the **complaint/grievance is against the subgrantee**, the complaint/grievance must be presented to the subgrantee SCSEP director.
 - a. Upon receipt of a complaint/grievance, the subgrantee SCSEP director and the participant who filed the complaint/grievance, and any other appropriate parties (i.e. subgrantee agency director) should seek promptly to resolve the differences in an informal conference within seven (7) days.
 - b. If the complaint/grievance can be resolved during this meeting, the subgrantee SCSEP director shall provide written documentation of the resolution and submit the documentation to the participant and subgrantee agency director within seven (7) days of the meeting.
 - c. If the complaint/grievance cannot be resolved during this meeting, the subgrantee agency director shall schedule a formal meeting with the participant who filed the complaint/grievance and subgrantee SCSEP director within sixteen (16) days of the informal meeting.
 - i. The subgrantee agency director shall undertake a fact finding mission including the collection of any other relevant information and written

documentation related to the participant's complaint/grievance prior to the formal meeting.

- ii. The subgrantee agency director shall facilitate the meeting and render a decision in writing seven (7) days following the scheduled meeting. The decision, including the justification for the decision, shall be submitted in writing to the participant and the subgrantee SCSEP director. A copy shall be maintained in the participant's file.

D. Appeals

If the participant wishes to appeal the decision resulting from the complaint resolution and grievance policy procedure (see Section C.), the participant has the option of appealing to NYSOFA and/or the U.S. Department of Labor.

1. The process for appealing to NYSOFA is as follows:
 - a. The participant should file a written appeal to the NYSOFA Office of the General Counsel, 2 Empire State Plaza, Fifth Floor, Albany, NY 12223 within five (5) days of the subgrantee's decision.
 - b. NYSOFA will send a letter to the participant acknowledging receipt of the appeal within five (5) days. NYSOFA will review the appeal to determine if the subgrantee's complaint resolution and grievance policy procedure was followed and in compliance with this procedure and issue a final decision in writing within twenty (20) days.
 - i. If NYSOFA determines that the subgrantee's complaint resolution and grievance policy procedure was followed and in compliance with this procedure then NYSOFA will notify the participant in writing that the subgrantee's decision will stand.
 - ii. If NYSOFA determines that the subgrantee's complaint resolution and grievance policy procedure was not followed then NYSOFA will send the complaint/grievance back to the subgrantee with the direction for the subgrantee to follow the complaint resolution and grievance policy procedure.
 - iii. If NYSOFA determines that the subgrantee's complaint resolution and grievance policy procedure is not in compliance with this procedure then NYSOFA will require the subgrantee to take corrective action.
 - iv. If NYSOFA determines there was a violation of Title V of the Older Americans Act then NYSOFA will require the subgrantee and/or host agency to take corrective action.
 - v. If the appeal alleges any other violation of law then NYSOFA will refer the appeal to the U.S. Department of Labor.
 - c. NYSOFA's decision will be final, except if the participant appeals to the U.S. Department of Labor as described below.
2. The process for appealing to U.S. Department of Labor is as follows:

- a. An appeal may be filed with the Chief, Division of National Programs, Tools and Technical Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
- b. U.S. Department of Labor regulations governing SCSEP (20 CFR 641) provide that, except for complaints alleging violations of the law and for complaints alleging discrimination, the department shall limit its review to determining whether the grievance procedures of the grantee were followed.

Senior Community Service Employment Program (SCSEP) Complaint and Grievance Policy Procedure for NYSOFA Funded Authorized Positions: What You Need To Know

If you are not satisfied with or denied SCSEP services you have the right to file a complaint. This handout explains a process that (ORGANIZATION) has to follow when you file a complaint. They must do this in 30 days.

If you have a complaint about discrimination:

Any complaint you have about discrimination on the basis of race, color, religion, sex, national origin, political affiliation or belief, disability, age¹ (except when age was used for SCSEP eligibility²), citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or your participation in any WIOA Title I-financially assisted program or activity must be filed with the Civil Rights Center and/or the State-level EO Officer (see "Equal Opportunity is the Law" poster).

If you have any other complaints:

(ORGANIZATION) must follow the process below, all steps to be completed in 30 days total.

If you make a complaint verbally or in writing, then the following will happen:

If the complaint is against the location where you are placed for your work experience, the person at this host site who supervises SCSEP must tell (ORGANIZATION) and give them a copy of your complaint right away.

- The complaint must be given to your direct supervisor. All people involved (you, the direct supervisor, and the SCSEP director) should have an informal meeting to fix the problem within seven (7) days.
- If the complaint *can* be fixed at that meeting, the person at the host site who supervises SCSEP will write up the results within seven (7) days and give a copy to you, the host agency executive director, and the SCSEP director.
- If the complaint *cannot* be fixed at that informal meeting, the SCSEP director will schedule a formal meeting with you, your direct supervisor, and the host agency executive director within 16 days of the informal meeting.

The steps of this meeting are:

- The SCSEP director will collect all information about this complaint before the formal meeting.
- The SCSEP director will lead the meeting, and put their decision in writing seven (7) days following the scheduled meeting. The reason for

¹ More details on the nondiscrimination requirements can be found in: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 188 of the Workforce Investment Act of 1998 (WIA)

² As described in the Older American Act §502(a)(1) and 20 CFR Part 641 Subpart E

the decision will be given in writing to you and the host agency executive director. A copy will be kept in your file.

OR

If the complaint is against (ORGANIZATION), instead of the host agency:

- The complaint must be given to the SCSEP director. All people involved (you, the SCSEP director, and anyone else involved) should have an informal meeting to fix the problem within seven (7) days.
- If the complaint *can* be fixed at that meeting, the SCSEP director will write up the results within seven (7) days and give a copy to you and (ORGANIZATION) agency director.
- If the complaint *cannot* be fixed at that informal meeting, the (ORGANIZATION) director will schedule a formal meeting with you and the SCSEP director within 16 days of the informal meeting.

The steps of this meeting are as follows:

- The (ORGANIZATION) agency director will collect all information about this complaint before the formal meeting.
- The (ORGANIZATION) director will lead the meeting, and put their decision in writing seven (7) days following the scheduled meeting. The reason for the decision will be given in writing to you and the SCSEP director. A copy will be kept in your file.

If you believe there has been a violation of law:

If you think a law has been broken, file the complaint the same way you would any other complaint (explained above). (ORGANIZATION) has 30 days to resolve the complaint. If after the 30 days your issue is not fully resolved, you may take it a step further and file with:

NYSOFA Office of the General Counsel, 2 Empire State Plaza, 5th Floor, Albany
NY 12223

If after an additional 30 days with NYSOFA it is still not resolved, you can take the issue to:

Chief, Division of National Programs, Tools, and Technical Assistance, U.S.
Department of Labor, 200 Constitution Avenue, N.W., Washington DC 20210

Appeals

If after going through these steps you are not happy, you can appeal to NYSOFA and/or the U.S. Department of Labor. However, *NYSOFA and the U.S. Department of Labor will only be able to evaluate if this process was followed accurately (except in cases of discrimination or law violations).*

Here is the process for appealing to NYSOFA:

- You may file a written appeal to NYSOFA within five (5) days of (ORGANIZATION)'s decision by sending it here:

NYSOFA Office of the General Counsel, 2 Empire State Plaza, 5th Floor, Albany NY 12223

- NYSOFA will send a letter to you letting you know that they have received your appeal within five days. NYSOFA will review the appeal to determine if the policies you see outlined here were followed correctly and issue a final decision within 20 days.
 - If NYSOFA determines that everything was followed correctly, (ORGANIZATION)'s decision will stand.
 - If NYSOFA decides that (ORGANIZATION) did not follow this procedure correctly, NYSOFA will send your issue back to (ORGANIZATION) and instruct them to follow the procedures correctly.
 - If NYSOFA determines there was a violation of Title V of the Older Americans Act, then NYSOFA will require (ORGANIZATION) and/or host agency to take corrective action.
 - If the appeal alleges any other violation of law then NYSOFA will refer the appeal to the U.S. Department of Labor.
- NYSOFA's decision will be final, except if you appeal to the U.S. Department of Labor as described below.

Here is the process for appealing to U.S. Department of Labor:

- You may file a written appeal to U.S. Department of Labor after 60 days from your initial complaint by sending it here:

Chief, Division of National Programs, Tools, and Technical Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington DC 20210

- U.S. Department of Labor's oversight of this program³ says they can only review whether or not these steps were followed. The exceptions to this is when there are complaints claiming violations of the law and for complaints saying there was discrimination, which are handled the way this handout described in the beginning.

³ The details about these SCSEP regulations can be found here: 20 CFR 641