

Federal Property Management Regulations

§ 101-8.717

§ 101-8.715 Compliance reviews.

(a) GSA may conduct compliance reviews and use similar procedures to investigate and correct violations of the Act and this regulation. GSA may conduct the reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this regulation has occurred.

(b) If a compliance review indicates a violation of the Act or this regulation, GSA attempts to achieve voluntary compliance with the Act. If compliance cannot be achieved, GSA arranges for enforcement as described in § 101-8.720.

§ 101-8.716 Complaints.

(a) Any person, individually or as a member of a class (defined at § 101-8.703(e)) or on behalf of others, may file a complaint with GSA alleging discrimination prohibited by the Act or this regulation based on an action occurring after July 1, 1979. A complainant must file a complaint within 80 days from the date the complainant first has knowledge of the alleged act of discrimination. However, for good cause shown, GSA may extend this time limit.

(b) GSA considers the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) GSA attempts to facilitate the filing of complaints if possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes the action or practice complained of, and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint;

(3) Notifying the complainant and the recipient (or their representative) of their right to contact GSA for information and assistance regarding the complaint resolution process.

(d) GSA returns to the complainant any complaint outside the jurisdiction of this regulation, and states the rea-

son(s) why it is outside the jurisdiction of the regulation.

§ 101-8.717 Mediation.

(a) GSA promptly refers to the mediation agency designated by the Secretary, HHS, all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and

(2) Contain the information needed for further processing.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgement that an agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient agree, the mediator will prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator must send a copy of the agreement to GSA. GSA takes no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation proceeds for a maximum of 60 calendar days after a complaint is filed with GSA. Mediation ends if:

(1) 60 calendar days elapse from the time the complaint is filed; or

(2) Before the end of the 60 calendar-day period an agreement is reached; or

(3) Before the end of that 60 calendar-day period, the mediator finds that an agreement cannot be reached.

NOTE: The 60 calendar day period may be extended by the mediator, with the concurrence of GSA, for not more than 30 calendar days if the mediator determines that agreement is likely to be reached during the extension period.

(f) The mediator must return unresolved complaints to GSA.

§ 101-8.718 Investigation.

(a) *Informal investigation.* GSA investigates complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement. As part of the initial investigation, GSA uses informal factfinding methods, including joint or separate discussions with the complainant and the recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. GSA may seek the assistance of any involved State agency. GSA puts any agreement in writing and has it signed by the parties and an authorized official designated by the Administrator or the Director, Office of Organization and Personnel. The settlement may not affect the operation of any other enforcement efforts of GSA, including compliance reviews and investigation of other complaints that may involve the recipient. The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If GSA cannot resolve the complaint through informal investigation, it begins to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, GSA attempts to obtain voluntary compliance. If GSA cannot obtain voluntary compliance, it begins enforcement as described in § 101-8.720.

§ 101-8.719 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

- (a) Attempts to assert a right protected by the Act of this regulation; or
- (b) Cooperates in any mediation, investigation, hearing, conciliation, and enforcement process.

§ 101-8.720 Compliance procedure.

(a) GSA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from GSA under the program or activity involved where the recipient has violated the

Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceeding to enforce any rights of the United States or obligations of the recipients created by the Act or this regulation, or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that has the effect of correcting a violation of the Act or this regulation.

(b) GSA limits any termination to the particular recipient and program or activity or part of such program or activity GSA finds in violation of this regulation. GSA does not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from GSA.

(c) GSA takes no action under paragraph (a) until:

(1) The administrator advises the recipient of its failure to comply with the Act and this regulation and determines that voluntary compliance cannot be obtained, and

(2) 30 calendar days elapse after the Administrator sends a written report of the grounds of the action to the committees of Congress having legislative jurisdiction over the program or activity involved. The Administrator files a report if any action is taken under paragraph (a) of this section .

(d) GSA may also defer granting new Federal financial assistance from GSA to a recipient when a hearing under § 101-8.721 is initiated.

(1) New Federal financial assistance from GSA includes all assistance for which GSA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from GSA does not include assistance approved before the beginning of a hearing.

(2) GSA does not begin a deferral until the recipient receives notice of an opportunity for a hearing under § 101-8.721. GSA does not continue a deferral