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(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall 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) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:
   (1) 60 days elapse from the time the complaint is filed; or
   (2) Prior to the end of that 60 day period, an agreement is reached; or
   (3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

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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 or these regulations; or
   (b) Cooperates in any mediation, inquiry, hearing, or other part of DOI’s investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:
   (1) Termination of a recipient’s Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. 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 proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.
      (ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under §17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a determination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section until:
   (1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.
   (2)Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances.
and grounds of the action to the committees of Congress having legislative jurisdiction over the program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under §17.335(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI 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 DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under §17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under §17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§17.338 Alternate funds disbursal procedure.

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternative recipient to demonstrate:

(1) The ability to comply with these regulations; and
(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

§17.339 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or
(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;
(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and
(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;
(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney’s fees, but that the complainant must demand these costs in the complaint;
(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;
(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and