

sunset or repealed and have been succeeded by other economic incentives such as Opportunity Zones. As a result, the regulations in part 599 are not in use, and removing these regulations would update HUD's regulations and provide clarity to grantees on what programs are actively being funded.

### III. Justification for Final Rulemaking

In accordance with regulations at 24 CFR part 10, it is the practice of the Department to offer interested parties an opportunity to comment on proposed regulations. 24 CFR part 10 provides narrow exceptions to the notice and comment requirements if the Department finds good cause to omit notice and public participation. The good cause requirement under 24 CFR 10.1 may be satisfied when notice and public comment are impracticable, unnecessary, or contrary to the public interest. To publish a rule prior to receiving and responding to public comments, the agency must find that at least one good cause exception is applicable.

HUD has determined that good cause exists to promulgate this final rule without prior notice and comment. Specifically, the Department has concluded that it is unnecessary to solicit and respond to public comments on the deletion of regulations when the designations are no longer in use and statutory authorization for the incentives repealed in 2018. Accordingly, HUD has concluded there is good cause to publish this rule prior to receiving and responding to public comments.

### IV. Findings and Certifications

#### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of

choice for the public. This rule eliminates language in 24 CFR part 599 relating to a designation no longer used and without statutory authority since 2018. Accordingly, this rule has been determined not to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

#### *Regulatory Costs—Executive Order 14192*

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. OMB has determined that this final rule does not impose any regulatory costs as the regulations relate to designations that are all expired and is a repeal of a regulation for purposes of Executive Order 14192.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

#### *Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii)

preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments or the private sector within the meaning of the UMRA.

#### List of Subjects in 24 CFR Part 599

Community development, Economic development, Housing, Indians, Intergovernmental relations, Renewal communities, Reporting and recordkeeping requirements, Urban areas.

#### PART 599 [REMOVED]

■ Accordingly, for the reasons discussed in the preamble, and pursuant to the Secretary's authority under 42 U.S.C. 3535(d), HUD removes 24 CFR part 599.

**Ronald Kurtz,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2026-04447 Filed 3-5-26; 8:45 am]

BILLING CODE 4210-67-P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101-8 and 105-9

[GSPMR Case 2026-01; Docket No. GSA-GSA-2026-0067 Sequence No. 1]

RIN 3090-AK12

### General Services Property Management Regulation (GSPMR); Nondiscrimination on the Basis of the Age Act Regulation for Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Office of Government-wide Policy (OGP), U.S. General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is publishing a rule to migrate, without policy change,

GSA's regulations implementing the Age Discrimination Act of 1975 (Age Act), from the government-wide Federal Property Management Regulation (FPMR) to the GSA regulations codified regulations in the General Services Property Management Regulations (GSPMR).

**DATES:** This rule is effective March 6, 2026.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Deborah Cullins-Threets, Senior Equal Opportunity Specialist, Office of Civil Rights (OCR), at 202–501–0767 or [deborah.threets@gsa.gov](mailto:deborah.threets@gsa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Federal agencies are responsible for issuing regulations and guidance that clearly communicate their statutory responsibilities to the public. Executive Order 13891 (E.O. 13891), *Promoting the Rule of Law Through Improved Agency Guidance Documents*, establishes government-wide standards to ensure that guidance documents are transparent, accessible, and properly identified as non-binding unless authorized by law. Further, E.O. 13891 directs agencies to organize and maintain their guidance in a manner that reflects their purpose, ensures public availability, and reinforces the distinction between regulations and non-regulatory interpretive materials.

Likewise, E.O. 13777, *Enforcing the Regulatory Reform Agenda*, required Federal agencies to evaluate existing regulations to implement regulatory reform initiatives and policies in order to streamline, clarify, or eliminate unnecessary or outdated requirements. In response to E.O. 13777, GSA initiated a comprehensive review of its regulatory portfolio.

During GSA's review of its regulations, the Agency determined that its implementing regulation for the Age Act was improperly codified in the FPMR at 41 CFR part 101–8.7. The FPMR contains government-wide policy and guidance that applies across Federal agencies; however, the regulations at issue prohibit age discrimination in programs and activities of entities receiving Federal financial assistance through GSA and should be relocated to the GSPMR at 41 CFR part 105, which contains regulations that apply only to GSA. Relocating the regulations embraces the spirit and intent of E.O. 13777 to eliminate unnecessary regulatory costs by allowing GSA to close out the FPMR. *See also* E.O. 13771 *Reducing Regulation and Controlling Regulatory Costs*.

In summary, relocating the Age Act regulation is necessary to correct the regulatory placement, improve transparency and public understanding, and ensure consistency with E.O. 13777.

*Purpose of the Regulation*

The legislative history of the Age Act reflects Congress's findings that age-based discrimination in federally assisted programs and activities constituted a barrier to full and fair participation by individuals of all ages. Congress identified a national need to establish uniform protections against age discrimination, consistent with its broader efforts to address age-related inequities, including those reflected in contemporaneous initiatives concerning older workers and older Americans. In November 1975, Congress enacted the Age Act as an amendment to the Older Americans Act (Pub. L. 94–135) to prohibit discrimination on the basis of age in all programs and activities receiving Federal financial assistance (42 U.S.C. 6101 *et seq.*). Within the text of the statute, Congress directed the U.S. Department of Health and Human Services (HHS) to issue regulations necessary to carry out the law. (42 U.S.C. 6103). Pursuant to this mandate, HHS promulgated government-wide regulations that require the head of each agency that extends federal financial assistance to any program or activity to publish regulations prohibiting age discrimination in the recipient's programs and activities. (45 CFR part 90). This statutory and regulatory framework provides the basis and authority for GSA's regulation and supports the agency's continued obligation to maintain and update its implementing regulation.

GSA provides federal assistance through grants, public conveyances, and state surplus property programs and must hold its recipients accountable to the requirements of the Age Act and GSA's regulation. For example, GSA is required to define how the regulation applies to those programs, and establish its own compliance procedures, including a process for addressing complaints of age discrimination.

GSA's Age Act regulation gives GSA clear authority to conduct compliance reviews, investigate complaints, impose corrective actions, and enforce nondiscrimination requirements on recipients of GSA assistance. Without its own regulation, GSA could not formally impose requirements or take enforcement action to ensure compliance.

Additionally, GSA's regulation ensures that compliance requirements are tailored to real property, surplus

property, and unique GSA assistance programs; processes that align with other GSA civil rights regulations, and compliance procedures that reflect GSA structure and workflows.

Having its own regulation ensures that GSA can update relevant terminology when necessary, modernize complaint-processing processes; add procedural clarity; and ensure alignment with current executive orders and the standards of other enforcement agencies.

Moreover, the regulation continues to be necessary because it provides protections for individuals interacting with GSA-funded programs; establishes clear expectations for GSA's recipients; supports GSA's compliance with government-wide civil rights responsibilities; and provides transparency, oversight, and accountability mechanisms to prevent age discrimination. GSA's regulation provides procedures to administer and authority to enforce the Age Act.

*No Substantive Policy Change*

The migration of GSA's Age Act regulation makes no amendments to the underlying regulatory text; rather, it places the regulation in the appropriate part of the CFR to align with GSA's organizational structure and regulatory framework.

**II. Discussion of the Final Rule**

The revisions are administrative and non-substantive in nature. They do not modify policy intent, regulatory requirements, or program operations. Because the action has no economic impact, no additional costs, and no effect on the rights or responsibilities of any party, it does not constitute a significant regulatory action. The non-substantive changes are updating the numbering and cross-references due to the move to a new subpart, and the two sections with definitions have been combined into one to streamline the regulation.

**III. Administrative Procedure Act**

This rulemaking is exempt from the advance notice-and-comment and delayed-effective-date requirements of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(2), because this rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rulemaking relates to both GSA's agency management and public property because it applies to Federally owned facilities under the jurisdiction, custody and control of GSA and the disposition of personal property.

#### IV. Executive Orders 12866, 13563, and 14192

E.O. 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action and, therefore, it was reviewed under Section 6(b) of E.O. 12866. This rule is not an E.O. 14192 regulatory action because this rulemaking is related to agency organization, management, or personnel.

#### V. Congressional Review Act

This rule does not meet the definition of a rule under 5 U.S.C. 804. OIRA has determined that this rule does not meet the definition of a major rule under 5 U.S.C. 804. Title II, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), is also known as the Congressional Review Act or CRA. The CRA generally provides that before a rule may take effect, unless excepted, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This rule is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801 as it relates to agency management or personnel under 5 U.S.C. 804(3)(B).

#### VI. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the APA pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property, loans, grants, benefits, or contracts. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

#### VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the

public that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**Edward Forst,**  
*Administrator.*

For the reasons set forth in the preamble, GSA amends 41 CFR subchapter A as follows:

- 1. The authority citation for Title 41 CFR part 101–8 continues to read as follows:

**Authority:** Title 40 U.S.C. 121(c).

#### PART 101–8.7 [REMOVED]

- 2. Remove subpart 101–8.7, consisting of §§ 101–8.700 through 101–8.725.
- 3. Add part 105–9 to read as follows:

#### Subpart 105–9—Discrimination Prohibited on the Basis of Age

Sec.

- 105–9.101 Purpose of the Age Discrimination Act of 1975.
- 105–9.102 Scope of General Services Administration's age discrimination regulation.
- 105–9.103 Applicability.
- 105–9.104 Definitions of terms.
- 105–9.105 Rules against age discrimination.
- 105–9.106 Exceptions to the rules against age discrimination
- 105–9.107 Reasonable factors other than age.
- 105–9.108 Burden of proof.
- 105–9.109 Affirmative action by recipient.
- 105–9.110 Special benefits for children and the elderly.
- 105–9.111 Age distinctions contained in General Services Administration regulation.
- 105–9.112 General responsibilities.
- 105–9.113 Notice to subrecipients and beneficiaries.
- 105–9.114 Assurance of compliance and recipient assessment of age distinctions.
- 105–9.115 Information requirements.
- 105–9.116 Compliance reviews.
- 105–9.117 Complaints.
- 105–9.118 Mediation.
- 105–9.119 Investigation.
- 105–9.120 Prohibition against intimidation or retaliation.
- 105–9.121 Compliance procedure.
- 105–9.122 Hearings.
- 105–9.123 Decisions and notices.
- 105–9.124 Remedial action by recipient.
- 105–9.125 Exhaustion of administrative remedies.
- 105–9.126 Alternate funds disbursal.

**Authority:** Title 40 U.S.C. 121(c).

#### § 105–9.101 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975, as amended, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

#### § 105–9.102 Scope of General Services Administration's age discrimination regulation.

This regulation sets out General Services Administration's (GSA) policies and procedures under the Age Discrimination Act of 1975, as amended, in accordance with 45 CFR part 90. The Act and the Federal regulation permits Federally assisted programs or activities to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

#### § 105–9.103 Applicability.

- (a) The regulation applies to each GSA recipient and to each program or activity operated by the recipient.
- (b) The regulations does not apply to:
  - (1) An age distinction contained in that part of Federal, State, local statute or ordinance adopted by an elected, general purpose legislative body that:
    - (i) Provides any benefits or assistance to persons based on age;
    - (ii) Establishes criteria for participation in age-related terms; or
    - (iii) Describes intended beneficiaries or target groups in age-related terms.
  - (2) Any employment practice of any employer, employment agency, labor organization or any labor-management apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment.

#### § 105–9.104 Definitions of terms.

As used in these regulations, the term: *Act* means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

*Action* means any act, activity, policy, rule, standard, or method of administration.

*Age* means how old a person is, or the number of years from the date of a person's birth.

*Age distinction* means any action using age or an age-related term.

*Age-related term* means a word or words that imply a particular age or range or ages (for example, *children, adults, older person*, but not *student*).

*Agency* means a Federal department or agency empowered to extend Federal financial assistance.

*Agency Responsible Officials* means:

- (1) *Administrator* means the Administrator of General Services.
  - (2) *Director, Office of Civil Rights* means the individual responsible for managing the agency's nondiscrimination Federal financial assistance policy, or his or her designee.
- Federal financial assistance* means—
- (1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) the services of Federal personnel,

(4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purposes of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and

(5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

GSA means the United States General Services Administration.

*Normal operation* means the operation of a program or activity without significant changes that would inhibit meeting objectives.

*Primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

*Program or activity* means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a state or of a local government;

(ii) The entity of such state and local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a state or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in title 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership,

private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition.

*Recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

*Statutory objective* means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

#### **§ 105–9.105 Rules against age discrimination.**

The rules stated in this section are limited by the exceptions contained in §§ 105–9.106 and 105–9.107 of this regulation.

(a) *General rule.* No person in the United States may on the basis of age, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from GSA.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangement, use age distinctions or take any other actions that have the effect on the basis of age, of:

(1) Excluding individuals from participating in, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individual opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The forms of age discrimination listed in paragraph (b) of this section are not necessarily a complete list.

#### **§ 105–9.106 Exceptions to the rules against age discrimination.**

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic can be reasonably measured or approximated by the use of age; and

(d) The other characteristic is impractical to measure directly on an individual basis.

#### **§ 105–9.107 Reasonable factors other than age.**

(a) A recipient is permitted to take an action, otherwise prohibited by § 105–9.106, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

#### **§ 105–9.108 Burden of proof.**

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 105–9.106 and 105–9.107 is the recipient's.

#### **§ 105–9.109 Affirmative action by recipient.**

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient's program or activity.

#### **§ 105–9.110 Special benefits for children and the elderly.**

If a recipient's program or activity provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program or activity.

#### **§ 105–9.111 Age distinctions contained in General Services Administration regulation.**

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies.

#### **§ 105–9.112 General responsibilities.**

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs or activities comply with the Act and this regulation and must take steps to eliminate violations of the Act. A recipient is also

responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this regulation.

**§ 105–9.113 Notice to subrecipients and beneficiaries.**

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this regulation.

(b) Each recipient makes necessary information about the Act and this regulation available to its beneficiaries to inform them about the protections against discrimination provided by the Act and this regulation.

**§ 105–9.114 Assurance of compliance and recipient assessment of age distinctions.**

(a) *Assurance of compliance.* Each recipient of Federal financial assistance from GSA signs a written assurance as specified by GSA that it intends to comply with the Act and this regulation.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 105–82.715 or complaint investigation under § 105–82.718, GSA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from GSA to assess the recipient's compliance with the Act.

(2) If an assessment indicates a violation of the Act and the GSA regulation, the recipient takes corrective action.

**§ 105–9.115 Information requirements.**

Each recipient must:

(a) Keep records in a form and containing information that GSA determines necessary to ensure that the recipient is complying with the Act and this regulation.

(b) Provide to GSA upon request, information and reports that GSA determines necessary to find out whether the recipient is complying with the Act and this regulation.

(c) Permit reasonable access by GSA to books, records, accounts, facilities, and other sources of information to the extent GSA finds it necessary to find out whether the recipient is complying with the Act and this regulation. GSA adopts the policy of the U.S. Department of Health and Human Services (HHS) regarding the kinds of data and information recipients are expected to maintain (Title 45 CFR Sec. 90.34). This regulation is parallel to compliance

provisions in the implementing regulations for Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments Act of 1972, and Sec. 504 of the Rehabilitation Act of 1973. While recognizing the need for enough data to assess recipient compliance, GSA is committed to reducing the data gathering burden on recipients. GSA further recognizes that there is no established body of knowledge or experience to guide the assessment of age discrimination. This regulation, therefore, does not impose specific data requirements upon recipients, rather, it allows GSA to be flexible in deciding what kinds of data should be kept by recipients, based on what kinds of data prove useful as GSA gains experience with the Age Discrimination Act, and age discrimination issues become clearer.

(d) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 59–511), the reporting and record keeping provisions included in this regulation will be submitted, for approval, to the Office of Management and Budget (OMB). No data collection or record keeping requirement will be imposed on recipients or donees without the required OMB approval number.

**§ 105–9.116 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 § 105–9.121.

**§ 105–82.117 Complaints.**

(a) Any person, individually or as a member of a class (defined at § 105–9.104 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 reason(s) why it is outside the jurisdiction of the regulation.

**§ 105–9.118 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.

(f) 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.

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

#### **§ 105–9.119 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 § 105–9.121.

#### **§ 105–9.120 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.

#### **§ 105–9.121 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) of this section 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 § 105–9.122 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 § 105–9.122. GSA does not continue a deferral for more than 60 calendar days unless a hearing begins within that time or the time for beginning the hearing is

extended by mutual consent of the recipient and the Administrator. GSA does not continue a deferral for more than 30 calendar days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) GSA limits any deferral to the particular recipient and program or activity or part of such program or activity GSA finds in violation of these regulations. GSA does not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not, receive Federal financial assistance from GSA.

#### **§ 105–9.122 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action; and either fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing or advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act, and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at GSA in Washington, DC, at a time fixed by GSA's Associate Administrator, for the Office of Civil Rights unless he or she determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings/Virtual hearings shall be held before a hearing examiner designated in accordance with Title 5 U.S.C. Secs. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or

recipient and GSA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with Secs. 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Officer conducting the hearing at the outset of or during the hearings. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advances on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated Joint Hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part, and the regulations of one or more other Federal departments or agencies issued under

Title VI, the responsible GSA official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 105–9.123.

**§ 105–9.123 Decisions and notices.**

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Agency designated reviewing authority for final decision. A copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for GSA may, within the period provided for in the rules of procedure issued by GSA official, file with the reviewing authority exceptions to the initial decision, with his or her reasons therefore. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue a decision including the reasons therefore. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 105–9.122(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each

findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Administrator.* If the Administrator has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for GSA may request the Administrator to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible GSA official. Such review is not a matter of right and shall be granted only where the Administrator determines there are special and important reasons therefore. The Administrator may grant or deny such request, in whole or in part. He or she may also review such a decision in accordance with rules of procedure issued by the responsible GSA official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of GSA when the Administrator transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible GSA official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order

for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible GSA official determines that those requirements have been satisfied, he or she shall restore such eligibility.

(3) If the responsible GSA official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall therefore be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

**§ 105–9.124 Remedial action by recipient.**

If GSA finds a recipient discriminated against on the basis of age, the recipient must take any remedial action that GSA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that discriminated, GSA may require both recipients to take remedial action.

**§ 105–9.125 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 calendar days elapse after the complainant files the complaint and GSA makes no finding with regard to the complaint; or

(2) GSA Issues a finding in favor of the recipient.

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

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring civil action only in a United States district court for the district in which the recipient is located 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 must give 30 calendar days notice by registered mail to the Secretary, HHS, The Administrator, the Attorney General of the United States, 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 whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

**§ 105.9–126 Alternate funds disbursal.**

If GSA withholds Federal financial assistance from a recipient under this regulation, the Administrator may disburse the assistance to an alternate recipient; any public or nonprofit private organization; or agency or State or political subdivision of the State. The Administrator requires any alternate recipient to demonstrate:

(a) The ability to comply with this regulation; and

(b) The ability to achieve the goals of the Federal Statutes authorizing the Federal financial assistance.

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