

§ 18.542

§ 18.542 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with VA alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, VA may extend this time limit. Complaints may be submitted to the Director, Office of Equal Opportunity (06B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) VA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Acknowledging receipt and acceptance of a complaint in writing.

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

(3) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(4) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(5) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(6) Notifying the complainant and the recipient (or their representatives) of their right to contact VA for information and assistance regarding the complaint resolution process.

(c) VA will refer a complaint of discrimination based on age to another appropriate Federal agency when the complaint is outside the jurisdiction of VA. VA will notify the complainant in writing that the complaint has been referred; explain the reason why the complaint is not within the jurisdiction of VA; and give the complainant the name, agency, and address of the offi-

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cial to whom the complaint was referred.

(Approved by the Office of Management and Budget under control number 2900-0401)

(Authority: 42 U.S.C. 6101-6107)

§ 18.543 Mediation.

(a) Referral of complaints for mediation. VA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

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

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to VA. VA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjunctive 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) VA will use the mediation process for a maximum of 60 days after the responsible agency official receives a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time the responsible agency official receives the complaint; 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 mediator determines that an agreement cannot be reached.

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(g) The mediator shall return unresolved complaints to VA.

(Authority: 42 U.S.C. 6101-6107)

§ 18.544 Investigation.

(a) *Informal investigation.* (1) VA will investigate complaints that are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation VA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. VA may seek the assistance of any involved State program agency.

(3) VA will put any agreement in writing and have it signed by the parties and an authorized official from the VA.

(4) The settlement shall not affect the operation of any other enforcement effort of VA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) A settlement need not contain an admission of discrimination or other wrongdoing by the recipient nor should it be considered a finding of discrimination against the recipient.

(b) *Formal investigation.* If VA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, VA will attempt to obtain voluntary compliance. If voluntary compliance cannot be achieved, VA may institute enforcement proceedings as described in § 18.546.

(Authority: 42 U.S.C. 6101-6107)

§ 18.545 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, investigation, hearing, or other part of

VA's investigation, conciliation, and enforcement process.

(Authority: 42 U.S.C. 6101-6107)

§ 18.546 Compliance procedure.

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

(1) Termination of Federal financial assistance from VA with respect to a recipient's program or activity that 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. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from VA.

(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) VA will limit any termination under paragraph (a)(1) of this section to the particular program or activity or part of such program and activity of a recipient that VA finds to be in violation of the Act or these regulations. VA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from VA.

(c) VA will take no action under paragraph (a) of this section until:

(1) The Secretary 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 has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.