

§617.11

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 Federal Mediation and Conciliation Service.

(e) NSF 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 NSF receives a sufficient complaint; *or*
- (2) Before the end of the 60 day period, an agreement is reached; *or*
- (3) Before the end of the 60 day period, the mediator determines that an agreement cannot be reached.

(f) The mediator shall return unresolved complaints to NSF.

§617.11 Investigation.

(a) *Informal investigation.* (1) NSF will investigate complaints that are unresolved after mediation or are reopened because of violation of a mediation agreement.

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

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

(4) A settlement shall not affect other enforcement efforts of NSF, including compliance reviews, or individual complaints that involve the recipient.

(5) A settlement is not a finding of discrimination against the recipient.

(b) *Formal investigation.* If NSF 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 the Act, NSF will try to obtain voluntary compliance. If NSF cannot obtain voluntary compliance, it will begin enforcement as described in §617.12. If the investigation does not indicate a violation of the Act, NSF will

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issue a written determination in favor of the recipient.

[49 FR 49628, Dec. 21, 1984, as amended at 68 FR 51383, Aug. 26, 2003]

§617.12 Compliance procedure.

(a) NSF may enforce this part by either termination of a recipient's financial assistance from NSF for the program or activity involved where the recipient has violated the Act or this part or refusal to grant further financial assistance under the program or activity involved where the recipient has violated the Act or this part. 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 settled in the mediation process or before a hearing will not involve termination of a recipient's Federal financial assistance from NSF.

(b) NSF may also enforce this part by any other means authorized by law, including but not limited to:

(1) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations by this part.

(2) 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 this part.

(c) NSF will limit any termination or refusal to grant further financial assistance to the particular recipient and the particular program or activity found to be in violation of the Act. NSF will not base any part of a termination or refusal on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance for NSF.

(d) NSF will not begin any hearing under paragraph (a) until the Director has advised the recipient of its failure to comply with this part and has determined that voluntary compliance cannot be obtained.

(e) NSF will not terminate or refuse to grant financial assistance until thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the

program or activity involved. The Director will file a report whenever any action is taken under paragraph (f) of this section.

(f) *Alternate Funds Disbursal Procedures.* (1) When NSF withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(2) The Director will require any alternate recipient to demonstrate:

(i) The ability to comply with these regulations; and

(ii) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[49 FR 49628, Dec. 21, 1984, as amended at 68 FR 51383, Aug. 26, 2003]

§ 617.13 Hearings, decisions, post-termination proceedings.

Procedures prescribed in 45 CFR 611.9 and 611.10 for NSF enforcement of Title VI of the Civil Rights Act of 1964 shall apply also for NSF enforcement of this part. At the conclusion of any action taken under § 617.12, NSF, shall remind both parties of the right to judicial review established by 42 U.S.C. 6105.

§ 617.14 Remedial action by recipients.

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

§ 617.15 Exhaustion of administrative remedies.

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

(1) 180 days have elapsed since the complainant filed a sufficient complaint and NSF has made no finding with regard to the complaint; or

(2) NSF issues any finding in favor of the recipient.

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

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief under 42 U.S.C. 6104; and

(3) Inform the complainant that under 42 U.S.C. 6104:

(i) The complainant may bring a civil action only in a United States District court for the district in which the recipient is located or transacts business;

(ii) 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) Before commencing the action the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) 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) 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.

§ 617.16 Prohibition against intimidation or retaliation.

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

(a) Attempts to assert a right protected by the Act, or

(b) Cooperates in any mediation, investigation, hearing or other part of NSF's investigation, conciliation, and enforcement process.

APPENDIX I TO PART 617—LIST OF AGE DISTINCTIONS PROVIDED IN FEDERAL STATUTES OR REGULATIONS AFFECTING FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY NSF

I. Section 6 of Pub. L. 94-86, 42 U.S.C. 1881a: This statute authorizes the Foundation to establish the Alan T. Waterman Award to recognize and encourage the work of