

§ 27.123

fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Departmental official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program or activity for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as

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the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

§ 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply

with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program or activity, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

§ 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a