

§ 101-8.718

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.

NOTE: 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.

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

§ 101-8.718 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 program 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 ob-

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tain voluntary compliance. If GSA cannot obtain voluntary compliance, it begins enforcement as described in § 101-8.720.

§ 101-8.719 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.

§ 101-8.720 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 and 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) 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 Federal 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 § 101-8.721 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 § 101-8.721. 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.

§ 101-8.721 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, D.C., at a time fixed by the Director, Office of Civil Rights (OCR), unless he or she determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 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 sections 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 an official