

or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand pursuant to the provisions of this part.

PART 617—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM NSF

Sec.

- 617.1 Purpose.
- 617.2 Definitions.
- 617.3 Standards.
- 617.4 General duties of recipients.
- 617.5 Self-evaluation.
- 617.6 Information requirements.
- 617.7 Compliance reviews.
- 617.8 Pre-award reviews.
- 617.9 Complaints.
- 617.10 Mediation.
- 617.11 Investigation.
- 617.12 Compliance procedure.
- 617.13 Hearings, decisions, post-termination proceedings.
- 617.14 Remedial action by recipients.
- 617.15 Exhaustion of administrative remedies.
- 617.16 Prohibition against intimidation or retaliation.

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

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90.

SOURCE: 49 FR 49628, Dec. 21, 1984, unless otherwise noted.

§617.1 Purpose.

This part prescribes NSF's policies and procedures under the Age Discrimination Act of 1975 and the Department of Health and Human Services government-wide age discrimination regulations at 45 CFR part 90. The Act and part 90 prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and part 90 permit federally assisted programs and activities and recipients of Federal funds to continue to use age distinctions and factors other than age which meet the requirements of the Act and part 90.

§617.2 Definitions.

The following terms used in this part are defined in part 90:

Act
Action
Age
Age distinction
Age-related term
Agency
Federal financial assistance
Recipient (including subrecipients)
United States

§617.3 Standards.

Standards for determining whether an age distinction or age-related term is prohibited are set out in part 90 of this title 45. See also appendix I to this part.

§617.4 General duties of recipients.

Each recipient of Federal financial assistance from NSF shall comply with the Act, part 90, and this part. Each NSF award of Federal financial assistance shall contain the following provision:

COMPLIANCE WITH AGE DISCRIMINATION ACT

The recipient agrees to comply with the Age Discrimination Act of 1975 as implemented by the Department of Health and Human Services regulations at 45 CFR part 90 and the regulations of the Foundation at 45 CFR part 617. In the event the recipient passes on NSF financial assistance to subrecipients, this provision shall apply to the subrecipients, and the instrument under which the Federal financial assistance is passed to the subrecipient shall contain a provision identical to this provision.

§617.5 Self-evaluation.

(a) Each recipient (including subrecipients) employing the equivalent of fifteen or more full-time employees shall complete a written self-evaluation of its compliance under this part within 18 months of the effective date of these regulations, unless a similar evaluation has been completed for another agency.

(b) In its self-evaluation, each recipient shall identify all age distinctions it uses and justify each age distinction it imposes on the program or activity receiving Federal financial assistance from NSF.

National Science Foundation

§ 617.10

(c) Each recipient shall take corrective action whenever a self-evaluation indicates a violation of the Act.

(d) Each recipient shall make the self-evaluation available on request to NSF and the public for three years after its completion.

§ 617.6 Information requirements.

Each recipient shall:

(a) Make available upon request to NSF information necessary to determine whether the recipient is complying with the Act.

(b) Permit reasonable access by NSF or its designee to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is complying with the Act.

§ 617.7 Compliance reviews.

(a) NSF may conduct compliance reviews of recipients that will permit it to investigate and correct violations of the Act. NSF may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of the Act has occurred.

(b) If a compliance review indicates a violation of the Act, NSF will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, NSF may arrange for enforcement as described in § 617.12.

§ 617.8 Pre-award reviews.

NSF reserves the right to conduct pre-award reviews of applicants for Federal financial assistance from NSF in cases where the NSF has substantial reason to believe that a potential recipient who is not then a recipient of other NSF financial assistance under the same program or activities may engage in practices under that program or activity that would violate the Act. However, the results of any such review shall not constitute a basis for NSF refusal to grant financial assistance to the applicant under that program or activity unless the procedural requirements of the Act (42 U.S.C. 6104) and §§ 617.12 and 617.13 of this part have been followed.

§ 617.9 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NSF, alleging discrimination prohibited by the Act. 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, NSF may extend this time limit.

(b) NSF will accept 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. If an insufficient complaint is amended within 10 working days after notice by NSF to the complainant of the deficiency, NSF will consider the amended complaint as filed on the date the original insufficient complaint was filed for purposes of determining if it was timely filed. However, all other time requirements established by the Act and this part shall run from the date the amended complaint was filed.

(c) On receipt of any complaint NSF shall promptly send written acknowledgement to the complainant, and a copy of the complaint to the recipient. In addition, NSF shall send either copies of this part or other pertinent information describing the rights and obligations of the parties.

(d) NSF will return to the complainant any complaint outside the coverage of this part, and will state why it is outside the coverage of this part.

§ 617.10 Mediation.

(a) NSF will refer to the Federal Mediation and Conciliation Service all complaints that fall within the jurisdiction of this part and 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 for a mediator to make an informed judgement that an agreement is not possible. NSF

will take no further administrative action on any complaint if the complainant refuses to participate in the mediation process.

(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 recipient sign it. The mediator shall send a copy of the agreement to NSF. NSF shall take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement, in which case the other party may request that the complaint be reopened.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation 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 program 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, in-

cluding 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 issue a written determination in favor of the recipient.

§ 617.12 Compliance procedure.

(a) NSF may enforce this part by either termination of a recipient's financial assistance from NSF under 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 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

National Science Foundation

§ 617.16

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 Federal 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 Federal 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 program or activity.

§ 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 “younger” scientists. Under NSF procedures awards have been limited to persons 35 years of age or under.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

- Sec.
620.100 Purpose.
620.105 Definitions.
620.110 Coverage.
620.115 Policy.

Subpart B—Effect of Action

- 620.200 Debarment or suspension.
620.205 Ineligible persons.
620.210 Voluntary exclusion.
620.215 Exception provision.
620.220 Continuation of covered transactions.
620.225 Failure to adhere to restrictions.

Subpart C—Debarment

- 620.300 General.
620.305 Causes for debarment.
620.310 Procedures.
620.311 Investigation and referral.
620.312 Notice of proposed debarment.
620.313 Opportunity to contest proposed debarment.
620.314 Debarring official's decision.
620.315 Settlement and voluntary exclusion.
620.320 Period of debarment.
620.325 Scope of debarment.

Subpart D—Suspension

- 620.400 General.
620.405 Causes for suspension.
620.410 Procedures.
620.411 Notice of suspension.
620.412 Opportunity to contest suspension.
620.413 Suspending official's decision.
620.415 Period of suspension.

- 620.420 Scope of suspension.

Subpart E—Responsibilities of GSA, NSF and Participants

- 620.500 GSA responsibilities.
620.505 NSF responsibilities.
620.510 Participants' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

- 620.600 Purpose.
620.605 Definitions.
620.610 Coverage.
620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
620.620 Effect of violation.
620.625 Exception provision.
620.630 Certification requirements and procedures.
620.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

APPENDIX A TO PART 620—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B TO PART 620—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 620—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 1870(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

SOURCE: 53 FR 19201 and 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990 and 60 FR 33036, June 26, 1995.

EDITORIAL NOTE:

(1) For nomenclature change to part 620, see 53 FR 19201, May 26, 1988.

(2) For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

Subpart A—General

§ 620.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded