

**§ 42.731**

**28 CFR Ch. I (7-1-11 Edition)**

probably noncompliance, the Department shall inform the applicant or recipient and shall promptly begin enforcement as described in § 42.733.

**§ 42.731 Complaints.**

(a) *General.* This section provides for the filing, by aggrieved persons, of complaints alleging violation of this subpart. Although the complaint process is limited to aggrieved persons, any person who has information regarding a possible violation of this subpart may provide it to the Department.

(b) *Receipt of complaints.* (1) Any aggrieved person, individually or as a member of a class, may file with the Department a written complaint alleging a violation of this subpart. A complaint may be filed by a representative of an aggrieved person. A complaint must be filed within 180 days of the date the complainant first knew of the alleged violation. However, this time limit may, for good cause shown, be extended by the Department.

(2) The Department shall promptly review each such complaint for sufficiency. A complaint will be deemed sufficient if it—

(i) Describes an action that may constitute a violation of this subpart; and

(ii) Contains information necessary for further processing (i.e., identifies the parties involved, states the date when the complainant first learned of the alleged violation, and is signed by the complainant).

(3) When a complaint is deemed sufficient, the Department shall promptly refer it to the FMCS for mediation.

(4) When a complaint is deemed insufficient, the Department shall advise the complainant of the reasons for that determination. A complainant shall be freely permitted to add information necessary for further processing.

(c) *Representation of parties.* During each stage of the complaint process, the complainant and the recipient may be represented by an attorney or other representative.

(d) *Assistance from the Department.* Any complainant or recipient may request from the Department information regarding the complaint process.

(e) *Mediation.* (1) When a complaint is referred for mediation, the complainant and the recipient shall participate

in the mediation process to the extent necessary either to reach an agreement or to enable the mediator to determine that no agreement can be reached. No determination that an agreement is not possible shall be made until the mediator has conferred at least once, jointly or separately, with each of the parties.

(2) If the complainant and the recipient reach an agreement, they shall reduce the agreement to writing and sign it. The mediator shall send a copy of the agreement to the Department.

(3) If, after 60 days after the Department's receipt of a complaint, no agreement is reached or if, within that 60-day period, the mediator determines that no agreement can be reached, the mediator shall return the complaint to the Department.

(4) The mediator shall protect the confidentiality of information obtained during the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained during the mediation process without prior approval of the Director of the FMCS.

(f) *Department investigations.* The Department shall promptly investigate any complaint that is unresolved after mediation or is reopened because of violation of a mediation agreement. An investigation should include a review of the pertinent actions or practices of the recipient and the circumstances under which the alleged discrimination occurred. During an investigation the Department shall take appropriate steps to obtain informal resolution of the complaint.

(g) *Resolution of matters.* (1) Where, prior to any finding by the Department of probable noncompliance with this subpart, discussions between the Department and the parties result in settlement of a complaint, the Department shall prepare an agreement to be signed by the parties and an authorized official of the Department. A settlement shall not affect the operation of any other enforcement efforts of the Department, including compliance reviews or investigation of other complaints involving the recipient.

(2) If the Department determines that an investigation pursuant to paragraph (f) of this section indicates probable noncompliance with this subpart, the Department shall inform the recipient and shall promptly begin enforcement pursuant to § 42.733.

(3) If the Department determines that an investigation does not indicate probable noncompliance, the Department shall inform the recipient and the complainant. The Department shall also inform the complainant of his or her right to bring a civil action as described in § 42.736.

**§ 42.732 Prohibition against intimidation.**

A recipient may not intimidate or retaliate against any person who attempts to assert a right secured by the Act and this subpart or who cooperates in any mediation, investigation, hearing, or other aspect of the Department's compliance procedure.

**§ 42.733 Enforcement procedures.**

(a) *Voluntary compliance.* When a compliance review or complaint investigation results in a finding of probable noncompliance with this subpart, the Department shall attempt to obtain voluntary compliance. An agreement for voluntary compliance shall describe the corrective action to be taken and time limits for such action and shall be signed by the recipient and an authorized official of the Department.

(b) *Means of enforcement—(1) General.*

(i) The Department may seek to enforce this subpart—

(A) By administrative proceedings that may lead to termination or refusal of federal financial assistance to the particular program or activity; or

(B) By any other means authorized by law. Such other means include lawsuits by the Department of enjoin violations of this subpart.

(ii) To the extent consistent with the Act, the Department, in enforcing this subpart, shall follow the procedures applicable to enforcement of title VI of the Civil Rights Act of 1964.

(2) *Termination of federal financial assistance.* With regard to enforcement of this subpart through the termination or refusal of federal financial assistance, the Department shall follow the

provisions of its title VI regulation concerning notice (28 CFR 42.180(c)), hearings (28 CFR 42.109), and decisions (28 CFR 42.110). However, with respect to programs or activities receiving federal financial assistance from a component of the Department's Office of Justice Programs (OJP), the requirement of 28 CFR 42.110(e) that a sanction be approved by the Attorney General shall not apply; that function may be performed by the Assistant Attorney General, OJP.

(3) *Other means of enforcement.* With regard to enforcement of this subpart through other means, the Department shall follow the procedures of 28 CFR 42.108(d). In addition, at least 30 days before commencing a lawsuit or taking other action pursuant to paragraph (b)(1)(i)(A) of this section, the Department shall send an appropriate report to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved.

(c) *Deferral.* When a proceeding for the termination or refusal of federal financial assistance is initiated pursuant to paragraph (b)(1)(i)(A) of this section, the Department may defer granting new federal financial assistance to the recipient.

(1) New federal financial assistance includes any assistance for which, during the deferral period, the Department requires an application or approval, including renewal or continuation of existing activities or authorization of new activities. New federal financial assistance does not include assistance approved prior to initiation of the administrative proceeding or increases in funding as a result of a change in the manner of computing formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Department. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.