

## § 7.940

determines are necessary to ascertain whether the recipient is complying with the Act and this regulation.

(c) Permit FEMA reasonable access to the books, records, accounts, and other recipient facilities and sources of information to the extent FEMA determines is necessary to ascertain whether the recipient is complying with the Act and this regulation.

### INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES

#### § 7.940 Compliance reviews.

(a) FEMA may conduct compliance reviews and preaward reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and this regulation. FEMA may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this regulation has occurred.

(b) If a compliance review or preaward review indicates a violation of the Act or this regulation, FEMA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, FEMA will arrange for enforcement as described in § 7.945.

#### § 7.941 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with FEMA, alleging discrimination prohibited by the Act or these regulations occurring after the date of final adoption of this rule. 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 showing, FEMA may extend this time limit.

(b) FEMA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed. A complaint is deemed "sufficient" when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimination) upon which to begin an investigation.

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(c) FEMA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting 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.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact FEMA for information and assistance regarding the complaint resolution process.

(d) FEMA will return to the complainant any complaint outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

#### § 7.942 Mediation.

(a) FEMA will promptly refer to a mediation agency designated by the Administrator all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and,

(2) 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 the mediator to make an informed judgment that an agreement is not possible.

(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 the recipient sign it. The mediator shall send a copy of the agreement to FEMA. FEMA will take no further action on the complaint unless the

complainant or the recipient fails to comply with the agreement.

(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 mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with FEMA. Mediation ends if:

(1) Sixty days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the mediator determines that an agreement cannot be reached. This 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines agreement will likely be reached during such extended period.

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

#### § 7.943 Investigation.

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

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

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

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

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

(b) *Formal investigation.* If FEMA 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 this regulation, FEMA will attempt to obtain voluntary compliance, it will begin enforcement as described in § 7.945.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

#### § 7.944 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 or this regulation; or

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

#### § 7.945 Compliance procedure.

(a) FEMA may enforce the Act and this regulation through:

(1) Termination of a recipient's Federal financial assistance from FEMA 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 proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this regulation.

(ii) 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 regulation.

(b) FEMA will limit any termination under § 7.945(a)(1) to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from FEMA.