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§ 18.544 Investigation.

(a) *Informal investigation.* (1) VA will investigate complaints that are reopened because of a violation of a mediation agreement.

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

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

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

(5) A settlement need not contain an admission of discrimination or other wrongdoing by the recipient nor should it be considered a finding of discrimination against the recipient.

(b) *Formal investigation.* If VA 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 these regulations, VA will attempt to obtain voluntary compliance. If voluntary compliance cannot be achieved, VA may institute enforcement proceedings as described in § 18.546.

(Authority: 42 U.S.C. 6101-6107)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51372, Aug. 26, 2003]

§ 18.545 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 these regulations; or

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

(Authority: 42 U.S.C. 6101-6107)

38 CFR Ch. I (7-1-08 Edition)

§ 18.546 Compliance procedure.

(a) VA may enforce the Act and these regulations through:

(1) Termination of Federal financial assistance from VA with respect to a recipient's program or activity that has violated the Act or these regulations. 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 which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from VA.

(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 these regulations.

(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 these regulations.

(b) VA will limit any termination under paragraph (a)(1) of this section to the particular program or activity or part of such program or activity of a recipient that VA finds to be in violation of the Act or these regulations. VA 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 VA.

(c) VA will take no action under paragraph (a) of this section until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.

(d) VA also may defer granting new Federal financial assistance from VA to a recipient when a hearing under

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paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from VA includes all assistance for which VA 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 VA does not include increases in funding resulting solely from a change in the formula or method of computing awards, nor does it include assistance approved prior to the beginning of a hearing under paragraph (a)(1) of this section.

(2) VA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. VA will not continue a deferral 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 Secretary. VA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(Authority: 42 U.S.C. 6101-6107)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51372, Aug. 26, 2003]

§ 18.547 Hearings, decisions, post-termination proceedings.

Certain VA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to VA enforcement of these regulations. They are found at §§ 18.9 through 18.11 and part 18b of this title.

(Authority: 42 U.S.C. 6101-1607)

§ 18.548 Remedial action by recipient.

Where VA finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that VA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, VA may require both recipients to take remedial action.

(Authority: 42 U.S.C. 6101-1607)

§ 18.549 Alternate funds disbursement procedure.

(a) When VA 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.

(b) The Secretary will require any alternate recipient to demonstrate;

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

(Authority: 42 U.S.C. 6101-1607)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51372, Aug. 26, 2003]

§ 18.550 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and VA has made no finding with regard to the complaint; or

(2) VA issues any finding in favor of the recipient.

(b) If VA fails to make a finding within 180 days or issues a finding in favor of the recipient, VA 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; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found 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 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 Secretary, the Attorney General of the United States, and the recipient;