

§ 1640.3

112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Section 504 agency means any Federal department or agency that extends Federal financial assistance to programs or activities of recipients.

Title I means title I of the ADA.

Title II means subtitle A of title II of the ADA.

§ 1640.3 Exchange of information.

The EEOC, section 504 agencies, and designated agencies shall share any information relating to the employment policies and practices of a respondent that may assist each agency in carrying out its responsibilities, to the extent permissible by law. Such information shall include, but is not limited to, complaints, charges, investigative files, compliance review reports and files, affirmative action programs, and annual employment reports.

§ 1640.4 Confidentiality.

(a) When a section 504 agency or a designated agency receives information obtained by the EEOC, such agency shall observe the confidentiality requirements of section 706(b) and section 709(e) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(b) and 2000e-8(e)), as incorporated by section 107(a) of the ADA, to the same extent as these provisions would bind the EEOC, except when the agency receives the same information from a source independent of the EEOC. Agency questions concerning the confidentiality requirements of title I shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel, the EEOC.

(b) When the EEOC receives information from a section 504 or a designated agency, the EEOC shall observe any confidentiality requirements applicable to that information.

§ 1640.5 Date of receipt.

A complaint or charge of employment discrimination is deemed to be filed, for purposes of determining timeliness, on the date the complaint or charge is first received by a Federal agency with section 504 or ADA jurisdiction, regardless of whether it is subsequently transferred to another agency for processing.

29 CFR Ch. XIV (7-1-08 Edition)

§ 1640.6 Processing of complaints of employment discrimination filed with an agency other than the EEOC.

(a) *Agency determination of jurisdiction.* Upon receipt of a complaint of employment discrimination, an agency other than the EEOC shall:

(1) Determine whether it has jurisdiction over the complaint under section 504 or under title II of the ADA; and

(2) Determine whether the EEOC may have jurisdiction over the complaint under title I of the ADA.

(b) *Referral to the Civil Rights Division.* If the agency determines that it does not have jurisdiction under section 504 or title II, and determines that the EEOC does not have jurisdiction under title I, the agency shall promptly refer the complaint to the Civil Rights Division. The Civil Rights Division shall determine if another Federal agency may have jurisdiction over the complaint under section 504 or title II, and, if so, shall promptly refer the complaint to a section 504 or a designated agency with jurisdiction over the complaint.

(c) *Referral to the EEOC—(1) Referral by an agency without jurisdiction.* If an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and processing under title I of the ADA.

(2) *Referral by a section 504 agency.* (i) A section 504 agency that otherwise has jurisdiction over a complaint of employment discrimination under section 504 shall promptly refer to the EEOC, for investigation and processing under title I of the ADA, any complaint of employment discrimination that solely alleges discrimination against an individual (and that does not allege discrimination in both employment and in other practices or services of the respondent or a pattern or practice of employment discrimination), unless:

(A) The section 504 agency determines that the EEOC does not have jurisdiction over the complaint under title I; or

(B) The EEOC has jurisdiction over the complaint under title I, but the complainant, either independently, or following receipt of the notification letter required to be sent to the complainant pursuant to paragraph (c)(2)(ii) of this section, specifically requests that the complaint be investigated by the section 504 agency.

(ii) Prior to referring an individual complaint of employment discrimination to the EEOC pursuant to paragraph (c)(2)(i) of this section (but not prior to making such a referral pursuant to paragraph (c)(1) of this section), a section 504 agency that otherwise has jurisdiction over the complaint shall promptly notify the complainant, in writing, of its intention to make such a referral. The notice letter shall:

(A) Inform the complainant that, unless the agency receives a written request from the complainant within twenty days of the date of the notice letter requesting that the agency retain the complaint for investigation, the agency will forward the complaint to the EEOC for investigation and processing; and

(B) Describe the basic procedural differences between an investigation under section 504 and an investigation under title I, and inform the complainant of the potential for differing remedies under each statute.

(3) *Referral by a designated agency.* A designated agency that does not have section 504 jurisdiction over a complaint of employment discrimination and that has determined that the EEOC may have jurisdiction over the complaint under title I shall promptly refer the complaint to the EEOC.

(4) *Processing of complaints referred to the EEOC.* (i) A complaint referred to the EEOC in accordance with this section by an agency with jurisdiction over the complaint under section 504 shall be deemed to be a dual-filed complaint under section 504 and title I. When a section 504 agency with jurisdiction over a complaint refers the complaint to the EEOC, the section 504 agency shall defer its processing of the complaint pursuant to §1640.10, pending resolution by the EEOC.

(ii) A complaint referred to the EEOC by an agency that has jurisdiction over the complaint solely under title II (and

not under section 504) will be treated as a complaint filed under title I only.

(iii) Any complaint referred to the EEOC pursuant to this section shall be processed by the EEOC under its title I procedures.

(d) *Retention by the agency for investigation—(1) Retention by a section 504 agency.* A section 504 agency shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under section 504, and one or more of the following conditions are met:

(i) The EEOC does not have jurisdiction over the complaint under title I; or

(ii) The EEOC has jurisdiction over the complaint, but the complainant elects to have the section 504 agency process the complaint and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to paragraph (c)(2)(ii) of this section; or

(iii) The complaint alleges discrimination in both employment and in other practices or services of the respondent that are covered by section 504; or

(iv) The complaint alleges a pattern or practice of employment discrimination.

(2) *Retention by a designated agency.* A designated agency that does not have jurisdiction over the complaint under section 504 shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under title II of the ADA and that the EEOC does not have jurisdiction over the complaint under title I.

(3) *Processing of complaints retained by an agency.* Any complaint retained for investigation and processing by an agency pursuant to paragraphs (d)(1) and (d)(2) of this section will be investigated and processed under section 504, title II, or both, as applicable, and will not be considered to be dual filed under title I.