

the EEOC may request that it be referred such allegations so as to avoid duplication of effort and assure effective law enforcement.

(1) *No cause section 503 complaints/ADA charges.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of no violation under section 503 (no cause under the ADA), OFCCP will issue a determination of no violation/no cause under both section 503 and the ADA, and issue a right-to-sue letter under the ADA, closing the complaint/charge.

(2) *Cause section 503 complaints/ADA charges—(i) Successful conciliation.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of violation under section 503 (cause under the ADA), OFCCP will issue a finding of violation/cause under both section 503 and ADA. OFCCP shall attempt conciliation to obtain appropriate full relief for the complainant (charging party), consistent with EEOC's standards for remedies. If conciliation is successful and the contractor/respondent agrees to provide full relief, the section 503 complaint/ADA charge will be closed and the conciliation agreement will state that the complainant (charging party) agrees to waive the right to pursue the subject issues further under section 503 and/or the ADA.

(ii) *Unsuccessful conciliation.* All section 503 complaints/ADA charges not successfully conciliated will be considered for OFCCP administrative litigation under section 503, consistent with OFCCP's usual procedures. (See 41 CFR part 60-741, subpart B.) If OFCCP pursues administrative litigation under section 503, OFCCP will close the complaint/charge at the conclusion of the litigation process (including the imposition of appropriate sanctions), unless the complaint/charge is dismissed on procedural grounds or because of a lack of jurisdiction, or the contractor/respondent fails to comply with an order to provide make whole relief. In these three cases, OFCCP will refer the matter to EEOC for any action it deems appropriate. If EEOC declines to pursue further action, it will issue a notice of right-to-sue. If OFCCP does not pursue administrative enforcement, it will close the section 503 component of the

complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA. If EEOC declines to litigate, EEOC will close the ADA charge and issue a notice of right-to-sue.

(f) Consistent with the ADA procedures set forth at 29 CFR 1601.28, OFCCP shall promptly issue upon request a notice of right-to-sue after 180 days from the date the complaint/charge was filed. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of any complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of section 503 and/or the ADA to further process the complaint/charge.

(g) If an individual who has already filed a section 503 complaint with OFCCP subsequently attempts to file or files an ADA charge with EEOC covering the same facts and issues, EEOC will decline to accept the charge (or, alternatively, dismiss a charge that has been filed) on the grounds that such charge has already been filed under the ADA, simultaneous with the filing of the earlier section 503 complaint, and will be processed by OFCCP in accordance with the provisions of this section.

#### **§ 1641.6 Processing of charges filed with EEOC.**

(a) *ADA cause charges falling within the jurisdiction of section 503 that the Commission has declined to litigate.* ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has declined to litigate will be referred to OFCCP for review of the file and any administrative action deemed appropriate under section 503. Such charges will be considered to be complaints, simultaneously dual filed under section 503, solely for the purposes of OFCCP review and administrative action described in this paragraph.

(b) *ADA charges which also include allegations of failure to comply with section 503 affirmative action requirements.* ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503

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are made, will be referred in their entirety to OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include allegations of discrimination on the basis of race, color, religion, sex, national origin or age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In such situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for processing and resolution under section 503. ADA charges which raise both discrimination issues under the ADA and section 503 affirmative action issues will be considered complaints, simultaneously filed under section 503, solely for the purposes of referral to OFCCP for processing, as described in this paragraph.

(c) EEOC shall transfer promptly to OFCCP a charge of disability-related employment discrimination over which it does not have jurisdiction, but over which OFCCP may have jurisdiction. At the same time, EEOC shall notify the charging party and the contractor/respondent of the transfer, the reason for the transfer, the location of the OFCCP office to which the charge was transferred and that the date EEOC received the charge will be deemed the date it was received by OFCCP.

(d) Except as otherwise stated in paragraphs (a) and (b) of this section, individuals alleging violations of laws enforced by DOL and over which EEOC has no jurisdiction will be referred to DOL to file a complaint.

(e) If an individual who has already filed an ADA charge with EEOC subsequently attempts to file or files a section 503 complaint with OFCCP covering the same facts and issues, OFCCP will accept the complaint, but will adopt as a disposition of the complaint EEOC's resolution of the ADA charge (including EEOC's termination of proceedings upon its issuance of a notice of right-to-sue).

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### § 1641.7 Review of this part.

This part shall be reviewed by the Chairman of the EEOC and the Director of OFCCP periodically, and as appropriate, to determine whether changes to the part are necessary or desirable, and whether the part should remain in effect.

### § 1641.8 Definitions.

As used in this part, the term:

*ADA* refers to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

*Affirmative action requirements* refers to affirmative action requirements required by DOL pursuant to section 503 of the Rehabilitation Act of 1973, that go beyond the nondiscrimination requirements imposed by the ADA.

*Chairman of the EEOC* refers to the Chairman of the U.S. Equal Employment Opportunity Commission, or his or her designee.

*Complaint/Charge* means a section 503 complaint/ADA charge. The terms are used interchangeably.

*Director of the Office of Federal Contract Compliance Programs* refers to that individual or his or her designee.

*DOL* means the U.S. Department of Labor, and where appropriate, any of its headquarters or regional offices.

*EEOC* means the U.S. Equal Employment Opportunity Commission, and where appropriate, any of its headquarters, district, area, local, or field offices.

*Government* means the government of the United States of America.

*Priority List* refers to a document listing a limited number of controversial topics under the ADA on which there is not yet definitive guidance setting forth EEOC's position. The Priority List will be jointly developed and periodically reviewed by EEOC and DOL. Any policy documents involving Priority List issues will be coordinated between DOL and EEOC pursuant to Executive Order 12067 (3 CFR, 1978 Comp., p. 206) prior to final approval by EEOC.

*OFCCP* means the Office of Federal Contract Compliance Programs, and where appropriate, any of its regional or district offices.

*Section 503* refers to section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793).