

§ 1640.11

29 CFR Ch. XIV (7-1-03 Edition)

the agency that shall process a dual-filed complaint or charge under § 1640.8(a)(1) or § 1640.8(e), the section 504 agency shall defer further action until:

(1) The EEOC issues a no cause finding and a notice of right-to-sue pursuant to 29 CFR 1601.19; or

(2) The EEOC enters into a conciliation agreement; or

(3) The EEOC issues a cause finding and a notice of failure of conciliation pursuant to 29 CFR 1601.21, and:

(i) If the recipient is not a government, governmental agency, or political subdivision, the EEOC completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28; or

(ii) If the recipient is a government, governmental agency, or political subdivision, the EEOC refers the charge to the Civil Rights Division in accordance with 29 CFR 1601.29, and the Civil Rights Division completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28(d); or

(4) The EEOC or, when a case has been referred pursuant to 29 CFR 1601.29, the Civil Rights Division, otherwise resolves the charge.

(b) *Notification of the deferring agency.* The EEOC or the Civil Rights Division, as appropriate, shall notify the agency that has deferred processing of the charge upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the EEOC or the Civil Rights Division, as appropriate, has resolved the complaint or charge, the agency shall promptly determine what further action by the agency is warranted. In reaching that determination, the agency shall give due weight to the findings and conclusions of the EEOC and to those of the Civil Rights Division, as applicable. If the agency proposes to take an action inconsistent with the EEOC's or the Civil Rights Division's findings and conclusions as to whether a violation has occurred, the agency shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the EEOC office that processed the complaint. In the written notification, the agency shall state the action that it

proposes to take and the basis of its decision to take such action.

(d) *Provision of information.* Upon written request, the EEOC or the Civil Rights Division shall provide the section 504 agency with any materials relating to its resolution of the charge, including its findings and conclusions, investigative reports and files, and any conciliation agreement.

§ 1640.11 EEOC review of deferred charges.

(a) *Deferral by the EEOC.* When it is determined that a section 504 agency is the agency that shall process a dual-filed complaint or charge under § 1640.8(a)(2) or § 1640.8(e), the EEOC shall defer further action until the section 504 agency takes one of the following actions:

(1) Makes a finding that a violation has not occurred;

(2) Enters into a voluntary compliance agreement;

(3) Following a finding that a violation has occurred, refers the complaint to the Civil Rights Division for judicial enforcement and the Civil Rights Division resolves the complaint;

(4) Following a finding that a violation has occurred, resolves the complaint through final administrative enforcement action; or

(5) Otherwise resolves the charge.

(b) *Notification of the EEOC.* The section 504 agency shall notify the EEOC upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the section 504 agency has resolved the complaint, the EEOC shall promptly determine what further action by the EEOC is warranted. In reaching that determination, the EEOC shall give due weight to the section 504 agency's findings and conclusions. If the EEOC proposes to take an action inconsistent with the section 504 agency's findings and conclusions as to whether a violation has occurred, the EEOC shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the section 504 agency that processed the complaint. In the written notification, the EEOC shall state the action that it proposes to take and the basis of its decision to take such action.

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(d) *Provision of information.* Upon written request, the section 504 agency shall provide the EEOC with any materials relating to its resolution of the complaint, including its conclusions, investigative reports and files, and any voluntary compliance agreement.

§ 1640.12 Standards.

In any investigation, compliance review, hearing or other proceeding, the standards used to determine whether section 504 has been violated in a complaint alleging employment discrimination shall be the standards applied under title I of the ADA and the provisions of sections 501 through 504, and 510, of the ADA, as such sections relate to employment. Section 504 agencies shall consider the regulations and appendix implementing title I of the ADA, set forth at 29 CFR part 1630, and case law arising under such regulations, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

§ 1640.13 Agency specific memoranda of understanding.

When a section 504 agency amends its regulations to make them consistent with title I of the ADA, the EEOC and the individual section 504 agency may elect to enter into a memorandum of understanding providing for the investigation and processing of complaints dual filed under both section 504 and title I of the ADA by the section 504 agency.

PART 1641—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

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AUTHORITY: 42 U.S.C. 12117(b).

SOURCE: 57 FR 2962, 2964, Jan. 24, 1992, unless otherwise noted.

§ 1641.1 Purpose and application.

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section 503. Nothing in this part is intended to create rights in any person.

§ 1641.2 Exchange of information.

(a) EEOC and OFCCP shall share any information relating to the employment policies and practices of employers holding government contracts or subcontracts that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance review reports and files.

(b) All requests by third parties for disclosure of the information described in paragraph (a) of this section shall be coordinated with the agency which initially compiled or collected the information.

(c) Paragraph (b) of this section is not applicable to requests for data in EEOC files made by any State or local agency designated as a "FEP agency" with which EEOC has a charge resolution contract and a work-sharing agreement containing the confidentiality requirements of sections