

**Equal Employment Opportunity Comm.**

**§ 1614.702**

all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the agency.

(e) The Complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

[57 FR 12646, Apr. 10, 1992, as amended at 64 FR 37661, July 12, 1999]

**§ 1614.606 Joint processing and consolidation of complaints.**

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the agency for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more

complaints of discrimination filed by the same complainant.

[64 FR 37661, July 12, 1999]

**§ 1614.607 Delegation of authority.**

An agency head may delegate authority under this part, to one or more designees.

**Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear Act) of 2002**

AUTHORITY: Sec. 303, Pub. L. 107-174, 116 Stat. 574.

SOURCE: 69 FR 3489, Jan. 26, 2004, unless otherwise noted.

**§ 1614.701 Purpose and scope.**

This subpart implements Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Public Law 107-174. It sets forth the basic responsibilities of federal agencies and the Commission to post certain information on their public Web sites.

**§ 1614.702 Definitions.**

The following definitions apply for purposes of this subpart:

(a) The term *Federal agency* means an Executive agency (as defined in 5 U.S.C. 105), the United States Postal Service, and the Postal Rate Commission;

(b) The term *Commission* means the Equal Employment Opportunity Commission and any subdivision thereof authorized to act on its behalf;

(c) The term *investigation* refers to the step of the federal sector EEO process described in 29 CFR 1614.108 and, for purposes of this subpart, it commences when the complaint is filed and ceases when the complainant is given notice under §1614.108(f) of the right to request a hearing or to receive an immediate final decision without a hearing;

(d) The term *hearing* refers to the step of the Federal sector EEO process described in 29 CFR 1614.109 and, for purposes of this subpart, it commences when the EEOC Administrative Judge (AJ) receives the complaint file from

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(d) The term *hearing* refers to the step of the Federal sector EEO process described in 29 CFR 1614.109 and, for purposes of this subpart, it commences when the EEOC Administrative Judge (AJ) receives the complaint file from

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the agency and ceases when the AJ returns the case to the agency to take final action;

(e) For purposes of §1614.704(h), (i) and (j), the phrase *without a hearing* refers to a final action by an agency that is rendered:

(1) When an agency does not receive a reply to a notice issued under §1614.108(f);

(2) After a complainant requests an immediate final decision,

(3) After a complainant withdraws a request for a hearing; and

(4) After an administrative judge cancels a hearing and remands the matter to the agency;

(f) For purposes of §1614.704(h), (i) and (j), the term *after a hearing* refers to a final action by an agency that is rendered following a decision by an administrative judge under §1614.109(f)(3)(iv), (g) or (i).

(g) The phrase *final action by an agency* refers to the step of the federal sector EEO process described in 29 CFR 1614.110 and, for purposes of this subpart, it commences when the agency receives a decision by an Administrative Judge (AJ), receives a request from the complainant for an immediate final decision without a hearing or fails to receive a response to a notice issued under §1614.108(f) and ceases when the agency issues a final order or final decision on the complaint.

(h) The phrase *final action by an agency involving a finding of discrimination* means:

(1) A final order issued by an agency pursuant to §1614.110(a) following a finding of discrimination by an administrative judge; and

(2) A final decision issued by an agency pursuant to §1614.110(b) in which the agency finds discrimination;

(i) The term *appeal* refers to the step of the federal sector EEO process described in 29 CFR 1614.401 and, for purposes of this subpart, it commences when the appeal is received by the Commission and ceases when the appellate decision is issued;

(j) The term *basis of alleged discrimination* refers to the individual's protected status (*i.e.*, race, color, religion, sex, national origin, age, disability, or retaliation). Only those bases protected by Title VII of the Civil Rights Act of

1964, as amended, 42 U.S.C. 2000e *et seq.*; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*; the Equal Pay Act of 1963, 29 U.S.C. 206(d); and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*, are covered by the federal EEO process.

(k) The term *issue of alleged discrimination* means one of the following challenged agency actions affecting a term or condition of employment as listed on EEOC Standard Form 462 (Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints): Appointment/hire; assignment of duties; awards; conversion to full time; disciplinary action/demotion; disciplinary action/reprimand; disciplinary action/suspension; disciplinary action/removal; duty hours; evaluation/appraisal; examination/test; harassment/non-sexual; harassment/sexual; medical examination; pay/overtime; promotion/non-selection; reassignment/denied; reassignment/directed; reasonable accommodation; reinstatement; retirement; termination; terms/conditions of employment; time and attendance; training; and, other.

(l) The term *subelement* refers to any organizational sub-unit directly below the agency or department level which has 1,000 or more employees.

### § 1614.703 Manner and format of data.

(a) Agencies shall post their statistical data in the following two formats: Portable Document Format (PDF) and an accessible text format that complies with section 508 of the Rehabilitation Act.

(b) Agencies shall prominently post the date they last updated the statistical information on the Web site location containing the statistical data.

(c) In addition to providing aggregate agency-wide data, each agency shall include separate data for each subelement listed in §1614.702(1). Such data shall be identified as pertaining to the particular subelement.

(d) Data posted under this subpart will be titled "Equal Employment Opportunity Data Posted Pursuant to the No Fear Act" and a hyperlink to the data will be posted prominently on the homepage of each agency's public Web

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(1) When an agency does not receive a reply to a notice issued under §1614.108(f);

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(3) After a complainant withdraws a request for a hearing; and

(4) After an administrative judge cancels a hearing and remands the matter to the agency;

(f) For purposes of §1614.704(h), (i) and (j), the term *after a hearing* refers to a final action by an agency that is rendered following a decision by an administrative judge under §1614.109(f)(3)(iv), (g) or (i).

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(1) A final order issued by an agency pursuant to §1614.110(a) following a finding of discrimination by an administrative judge; and

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site. In the case of agencies with subelements, the data shall be made available by hyperlinks from the Web sites of both the subelement (if one exists) as well as the parent agency.

(e) Agencies must post cumulative data pursuant to §1614.704 for the current fiscal year. Agencies may not post separate quarterly statistics for the current fiscal year.

### § 1614.704 Information to be posted—all Federal agencies.

Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, each federal agency must post the following current fiscal year statistics on its public Internet Web site regarding EEO complaints filed under 29 CFR part 1614:

(a) The number of complaints filed in such fiscal year;

(b) The number of individuals filing those complaints (including as the agent of a class);

(c) The number of individuals who filed two or more of those complaints;

(d) The number of those complaints raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged;

(e) The number of those complaints raising each of the various issues of alleged discrimination;

(f) The average length of time it has taken an agency to complete respectively investigation and final action by an agency for:

(1) All complaints pending for any length of time during such fiscal year,

(2) All complaints pending for any length of time during such fiscal year in which a hearing was not requested and

(3) All complaints pending for any length of time during such fiscal year in which a hearing was requested;

(g) The number of complaints dismissed by an agency pursuant to 29 CFR 1614.107(a), and the average length of time such complaints had been pending prior to dismissal;

(h)(1) The total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination and, of that number,

(2) The number and percentage that were rendered without a hearing and

(3) The number and percentage that were rendered after a hearing;

(i) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage of those based on each respective basis,

(2) The number and percentage for each respective basis that were rendered without a hearing and

(3) The number and percentage for each respective basis that were rendered after a hearing;

(j) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage for each respective issue,

(2) The number and percentage for each respective issue that were rendered without a hearing and

(3) The number and percentage for each respective issue that were rendered after a hearing;

(k) Of the total number of complaints pending for any length of time in such fiscal year,

(1) The number that were first filed before the start of the then current fiscal year,

(2) The number of individuals who filed those complaints in earlier years, and

(3) The number of those complaints that are respectively pending at the investigation, hearing, final action by an agency, and appeal step of the process; and

(1) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or §1614.108(e).

### § 1614.705 Comparative data—all Federal agencies.

Commencing on January 31, 2004 and no later than January 31 of each year thereafter, each federal agency shall post year-end data corresponding to that required to be posted by §1614.704

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(a) The number of complaints filed in such fiscal year;

(b) The number of individuals filing those complaints (including as the agent of a class);

(c) The number of individuals who filed two or more of those complaints;

(d) The number of those complaints raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged;

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(3) The number and percentage that were rendered after a hearing;

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(2) The number and percentage for each respective issue that were rendered without a hearing and

(3) The number and percentage for each respective issue that were rendered after a hearing;

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(1) The number that were first filed before the start of the then current fiscal year,

(2) The number of individuals who filed those complaints in earlier years, and

(3) The number of those complaints that are respectively pending at the investigation, hearing, final action by an agency, and appeal step of the process; and

(1) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or §1614.108(e).

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(a) The number of complaints filed in such fiscal year;

(b) The number of individuals filing those complaints (including as the agent of a class);

(c) The number of individuals who filed two or more of those complaints;

(d) The number of those complaints raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged;

(e) The number of those complaints raising each of the various issues of alleged discrimination;

(f) The average length of time it has taken an agency to complete respectively investigation and final action by an agency for:

(1) All complaints pending for any length of time during such fiscal year,

(2) All complaints pending for any length of time during such fiscal year in which a hearing was not requested and

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(1) The number that were first filed before the start of the then current fiscal year,

(2) The number of individuals who filed those complaints in earlier years, and

(3) The number of those complaints that are respectively pending at the investigation, hearing, final action by an agency, and appeal step of the process; and

(1) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or §1614.108(e).

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for each of the five immediately preceding fiscal years (or, if not available for all five fiscal years, for however many of those five fiscal years for which data are available). For each category of data, the agency shall post a separate figure for each year.

**§ 1614.706 Additional data to be posted by EEOC.**

(a) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission must post the following current fiscal year statistics on its public Internet Web site regarding hearings requested under this part 1614:

(1) The number of hearings requested in such fiscal year;

(2) The number of individuals filing those requests;

(3) The number of individuals who filed two or more of those requests;

(4) The number of those hearing requests involving each of the various bases of alleged discrimination;

(5) The number of those hearing requests involving each of the various issues of alleged discrimination;

(6) The average length of time it has taken EEOC to complete the hearing step for all cases pending at the hearing step for any length of time during such fiscal year;

(7)(i) The total number of administrative judge (AJ) decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that were rendered without a hearing, and

(iii) The number and percentage that were rendered after a hearing;

(8) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis,

(ii) The number and percentage for each respective basis that were rendered without a hearing, and

(iii) The number and percentage for each respective basis that were rendered after a hearing;

(9) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue,

(ii) The number and percentage for each respective issue that were rendered without a hearing, and

(iii) The number and percentage for each respective issue that were rendered after a hearing;

(10) Of the total number of hearing requests pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those hearing requests in earlier years; and

(11) Of the total number of hearing requests pending for any length of time in such fiscal year, the total number in which the Commission failed to complete the hearing step within the time required by § 1614.109(i).

(b) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission must post the following current fiscal year statistics on its public Internet Web site regarding EEO appeals filed under this part 1614:

(1) The number of appeals filed in such fiscal year;

(2) The number of individuals filing those appeals (including as the agent of a class);

(3) The number of individuals who filed two or more of those appeals;

(4) The number of those appeals raising each of the various bases of alleged discrimination;

(5) The number of those appeals raising each of the various issues of alleged discrimination;

(6) The average length of time it has taken EEOC to issue appellate decisions for:

(i) All appeals pending for any length of time during such fiscal year,

(ii) All appeals pending for any length of time during such fiscal year in which a hearing was not requested, and

(iii) All appeals pending for any length of time during such fiscal year in which a hearing was requested;

(7)(i) The total number of appellate decisions rendered in such fiscal year involving a finding of discrimination and, of that number,



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for each of the five immediately preceding fiscal years (or, if not available for all five fiscal years, for however many of those five fiscal years for which data are available). For each category of data, the agency shall post a separate figure for each year.

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(4) The number of those hearing requests involving each of the various bases of alleged discrimination;

(5) The number of those hearing requests involving each of the various issues of alleged discrimination;

(6) The average length of time it has taken EEOC to complete the hearing step for all cases pending at the hearing step for any length of time during such fiscal year;

(7)(i) The total number of administrative judge (AJ) decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that were rendered without a hearing, and

(iii) The number and percentage that were rendered after a hearing;

(8) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis,

(ii) The number and percentage for each respective basis that were rendered without a hearing, and

(iii) The number and percentage for each respective basis that were rendered after a hearing;

(9) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue,

(ii) The number and percentage for each respective issue that were rendered without a hearing, and

(iii) The number and percentage for each respective issue that were rendered after a hearing;

(10) Of the total number of hearing requests pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those hearing requests in earlier years; and

(11) Of the total number of hearing requests pending for any length of time in such fiscal year, the total number in which the Commission failed to complete the hearing step within the time required by § 1614.109(i).

(b) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission must post the following current fiscal year statistics on its public Internet Web site regarding EEO appeals filed under this part 1614:

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(2) The number of individuals filing those appeals (including as the agent of a class);

(3) The number of individuals who filed two or more of those appeals;

(4) The number of those appeals raising each of the various bases of alleged discrimination;

(5) The number of those appeals raising each of the various issues of alleged discrimination;

(6) The average length of time it has taken EEOC to issue appellate decisions for:

(i) All appeals pending for any length of time during such fiscal year,

(ii) All appeals pending for any length of time during such fiscal year in which a hearing was not requested, and

(iii) All appeals pending for any length of time during such fiscal year in which a hearing was requested;

(7)(i) The total number of appellate decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

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(ii) The number and percentage that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage that involved a final action by an agency after a hearing;

(8) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis of discrimination,

(ii) The number and percentage for each respective basis that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective basis that involved a final action by an agency rendered after a hearing;

(9) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue of discrimination,

(ii) The number and percentage for each respective issue that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective issue that involved a final action by an agency rendered after a hearing; and

(10) Of the total number of appeals pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those appeals in earlier years.

### **PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 54 FR 22749, May 26, 1989, unless otherwise noted.

#### **§ 1615.101 Purpose.**

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

#### **§ 1615.102 Application.**

This part applies to all programs or activities conducted by the Commission.

#### **§ 1615.103 Definitions.**

For purposes of this part, the term—*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials,