

§ 60-741.45

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

§ 60-741.45 Sheltered workshops.

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own work force. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become "qualified individuals with disabilities."

Subpart D—General Enforcement and Complaint Procedures

§ 60-741.60 Compliance reviews.

(a) OFCCP may conduct compliance reviews to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. The compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the

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forementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60-741.62.

§ 60-741.61 Complaint procedures.

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990 (ADA), OFCCP and the Equal Employment Opportunity Commission have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both the act and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part will be processed in accordance with those regulations, which are found at 41 CFR part 60-742, and with this part.

(b) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally or by an authorized representative, file a written complaint with the Deputy Assistant Secretary alleging a violation of the act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Complaints may be submitted to the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or to any OFCCP regional, district, or area office. Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown.

(c) *Contents of complaints—(1) In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) The facts showing that the individual is disabled or has a history of a

disability or was regarded by the contractor as having a disability;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (c)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(d) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(e) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(f) *Resolution of matters.* (1) If the complaint investigation finds no violation of the act or this part, or if the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60-741.65(a)(1), the complainant and contractor shall be so notified. The Deputy Assistant Secretary, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers

who have authority to issue Notifications of Results of Investigation.

(2) The Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under title I of the Americans with Disabilities Act.

(3) In cases where the Deputy Assistant Secretary decides to reconsider the determination of a Notification of Results of Investigation, the Deputy Assistant Secretary shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60-741.62.

§ 60-741.62 Conciliation agreements and letters of commitment.

(a) If a compliance review, complaint investigation or other review by OFCCP finds a material violation of the act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

(b) The term "conciliation agreement" does not include "letters of commitment," which are appropriate for resolving minor technical deficiencies.