

the contractor: *Provided*, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after August 29, 1996.

**§ 60-741.81 Access to records.**

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance reviews and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. Information obtained in this manner shall be used only in connection with the administration of the act, the administration of the Americans with Disabilities Act of 1990 (ADA) and in furtherance of the purposes of the act and the ADA.

**§ 60-741.82 Labor organizations and recruiting and training agencies.**

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.

**§ 60-741.83 Rulings and interpretations.**

Rulings under or interpretations of the act and this part shall be made by the Deputy Assistant Secretary.

**§ 60-741.84 Effective date.**

This part shall become effective August 29, 1996, and shall not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs as required to comply with this part by December 27, 1996.

APPENDIX A TO PART 60-741—GUIDELINES ON A CONTRACTOR'S DUTY TO PROVIDE REASONABLE ACCOMMODATION

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60-741.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under section 503, like reasonable accommodation required under the ADA, is a part of the nondiscrimination obligation. See EEOC appendix cited in this paragraph. Affirmative action is unique to section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of an employee with a known disability who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60-741.2(t), an individual with a disability is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a