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29 CFR Ch. XIV (7-1-04 Edition)

(c) This part also describes the procedures to be followed when a complaint or charge arising solely under section 504 or title I is filed with a section 504 agency or the EEOC.

(d) This part does not apply to complaints or charges against Federal contractors under section 503 of the Rehabilitation Act.

(e) This part does not create rights in any person or confer agency jurisdiction not created or conferred by the ADA or section 504 over any complaint or charge.

§ 1640.2 Definitions.

As used in this part, the term:

Americans with Disabilities Act of 1990 or *ADA* means the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, or his or her designee.

Chairman of the Equal Employment Opportunity Commission refers to the Chairman of the United States Equal Employment Opportunity Commission, or his or her designee.

Civil Rights Division means the Civil Rights Division of the United States Department of Justice.

Designated agency means any one of the eight agencies designated under § 35.190 of 28 CFR part 35 (the Department's title II regulation) to implement and enforce title II of the ADA with respect to the functional areas within their jurisdiction.

Dual-filed complaint or charge means a complaint or charge of employment discrimination that:

(1) Arises under both section 504 and title I;

(2) Has been filed with both a section 504 agency that has jurisdiction under section 504 and with the EEOC, which has jurisdiction under title I; and

(3) Alleges the same facts and raises the same issues in both filings.

Due weight shall mean, with respect to the weight a section 504 agency or the EEOC shall give to the other agency's findings and conclusions, such full and careful consideration as is appropriate, taking into account such factors as:

(1) The extent to which the underlying investigation is complete and the evidence is supportive of the findings and conclusions;

(2) The nature and results of any subsequent proceedings;

(3) The extent to which the findings, conclusions and any actions taken:

(i) Under title I are consistent with the effective enforcement of section 504; or

(ii) Under section 504 are consistent with the effective enforcement of title I; and

(4) The section 504 agency's responsibilities under section 504 or the EEOC's responsibilities under title I.

Equal Employment Opportunity Commission or *EEOC* refers to the United States Equal Employment Opportunity Commission, and, when appropriate, to any of its headquarters, district, area, local, or field offices.

Federal financial assistance shall have the meaning, with respect to each section 504 agency, as defined in such agency's regulations implementing section 504 for Federally-assisted programs.

Program or activity shall have the meaning defined in the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Public entity means:

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act, 45 U.S.C. 502(8)).

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under such program.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-

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112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Section 504 agency means any Federal department or agency that extends Federal financial assistance to programs or activities of recipients.

Title I means title I of the ADA.

Title II means subtitle A of title II of the ADA.

§ 1640.3 Exchange of information.

The EEOC, section 504 agencies, and designated agencies shall share any information relating to the employment policies and practices of a respondent that may assist each agency in carrying out its responsibilities, to the extent permissible by law. Such information shall include, but is not limited to, complaints, charges, investigative files, compliance review reports and files, affirmative action programs, and annual employment reports.

§ 1640.4 Confidentiality.

(a) When a section 504 agency or a designated agency receives information obtained by the EEOC, such agency shall observe the confidentiality requirements of section 706(b) and section 709(e) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(b) and 2000e-8(e)), as incorporated by section 107(a) of the ADA, to the same extent as these provisions would bind the EEOC, except when the agency receives the same information from a source independent of the EEOC. Agency questions concerning the confidentiality requirements of title I shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel, the EEOC.

(b) When the EEOC receives information from a section 504 or a designated agency, the EEOC shall observe any confidentiality requirements applicable to that information.

§ 1640.5 Date of receipt.

A complaint or charge of employment discrimination is deemed to be filed, for purposes of determining timeliness, on the date the complaint or charge is first received by a Federal agency with section 504 or ADA jurisdiction, regardless of whether it is subsequently transferred to another agency for processing.

§ 1640.6 Processing of complaints of employment discrimination filed with an agency other than the EEOC.

(a) *Agency determination of jurisdiction.* Upon receipt of a complaint of employment discrimination, an agency other than the EEOC shall:

(1) Determine whether it has jurisdiction over the complaint under section 504 or under title II of the ADA; and

(2) Determine whether the EEOC may have jurisdiction over the complaint under title I of the ADA.

(b) *Referral to the Civil Rights Division.* If the agency determines that it does not have jurisdiction under section 504 or title II, and determines that the EEOC does not have jurisdiction under title I, the agency shall promptly refer the complaint to the Civil Rights Division. The Civil Rights Division shall determine if another Federal agency may have jurisdiction over the complaint under section 504 or title II, and, if so, shall promptly refer the complaint to a section 504 or a designated agency with jurisdiction over the complaint.

(c) *Referral to the EEOC—(1) Referral by an agency without jurisdiction.* If an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and processing under title I of the ADA.

(2) *Referral by a section 504 agency.* (i) A section 504 agency that otherwise has jurisdiction over a complaint of employment discrimination under section 504 shall promptly refer to the EEOC, for investigation and processing under title I of the ADA, any complaint of employment discrimination that solely alleges discrimination against an individual (and that does not allege discrimination in both employment and in other practices or services of the respondent or a pattern or practice of employment discrimination), unless:

(A) The section 504 agency determines that the EEOC does not have jurisdiction over the complaint under title I; or