

§ 60-250.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Deputy Assistant Secretary may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60-250.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR Part 60-30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR Part 18, Subpart B: *Provided*, That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses

to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR Part 60-30 to "Executive Order 11246" shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; to "equal opportunity clause" shall mean the equal opportunity clause published at § 60-250.5; and to "regulations" shall mean the regulations contained in this part.

§ 60-250.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Deputy Assistant Secretary, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60-250.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60-250.67 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60-250.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Deputy Assistant

Secretary at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Deputy Assistant Secretary also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Deputy Assistant Secretary's decision. The petition shall be served on the Deputy Assistant Secretary and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Deputy Assistant Secretary may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60-250.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era; or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

§ 60-250.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60-250.80 Recordkeeping

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than