

§ 60-741.62

41 CFR Ch. 60 (7-1-04 Edition)

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.

§ 60-741.63 Violation of conciliation agreements and letters of commitment.

(a) When OFCCP believes that a conciliation agreement has been violated,

the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(d) When OFCCP believes that a letter of commitment has been violated, the matter shall be handled, where appropriate, pursuant to § 60-741.64. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

§ 60-741.64 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that the contractor has violated the act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60-741.65).

§ 60-741.65 Enforcement proceedings.

(a) *General.* (1) If a compliance review, 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 review. 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 § 60-741.5, 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 any 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.