

**§ 60-741.66**

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60-30 to “Executive Order 11246” shall mean section 503 of the Rehabilitation Act of 1973, as amended; to “equal opportunity clause” shall mean the equal opportunity clause published at 41 CFR 60-741.5; and to “regulations” shall mean the regulations contained in this part.

**§ 60-741.66 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 §60-741.68. 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.

**§ 60-741.67 Notification of agencies.**

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

**§ 60-741.68 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 pro-

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ceedings, 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 review 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.

**§ 60-741.69 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 review, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;
- (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 disabled persons; 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.

**§ 60-741.70 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**

**§ 60-741.80 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 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommoda-

tion; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance review has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance review or action until final disposition of the complaint, compliance review or action. The term "personnel records relevant to the complaint, compliance review or action" would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to 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.