

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.

**§ 60-741.81**

(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, sub-contractors, 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

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

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 job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an