

**§ 60-741.45**

**§ 60-741.44 Required contents of affirmative action programs.**

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(a) \* \* \*

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) or any other Federal, State or local law requiring equal opportunity for disabled persons;

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**§ 60-741.45 Sheltered workshops.**

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own work force. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become "qualified individuals with disabilities."

**Subpart D—General Enforcement and Complaint Procedures**

**§ 60-741.60 Compliance reviews.**

(a) OFCCP may conduct compliance reviews to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. The compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to §60-741.62.

EFFECTIVE DATE NOTE: At 70 FR 36265, June 22, 2005, §60-741.60 was amended by revising the section heading and paragraph (a), effective July 22, 2005. For the convenience of the user, the revised text is set forth as follows:

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**§ 60-741.60 Compliance evaluations.**

(a) OFCCP may conduct compliance evaluations to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 503 of the Rehabilitation Act of 1973 and regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with §60-741.80; at the

contractor's option the documents may be provided either on-site or off-site; or

(4) *Focused review.* An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

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#### § 60-741.61 Complaint procedures.

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990 (ADA), OFCCP and the Equal Employment Opportunity Commission have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both the act and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part will be processed in accordance with those regulations, which are found at 41 CFR part 60-742, and with this part.

(b) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally or by an authorized representative, file a written complaint with the Deputy Assistant Secretary alleging a violation of the act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Complaints may be submitted to the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or to any OFCCP regional, district, or area office. Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown.

(c) *Contents of complaints—(1) In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) The facts showing that the individual is disabled or has a history of a

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.