

conditions, or privileges of employment. For example, an employer that fires an employee because of anticipated high health claims based on genetic information remains subject to liability under Title II. On the other hand, health plan or issuer provisions or actions related to the imposition of a preexisting condition exclusion; a health plan's or issuer's discrimination in health plan eligibility, benefits, or premiums based on genetic information; a health plan's or issuer's request that an individual undergo a genetic test; and/or a health plan's or issuer's collection of genetic information remain subject to enforcement under Title I exclusively. For example:

(i) If an employer contracts with a health insurance issuer to request genetic information, the employer has committed a Title II violation. In addition, the issuer may have violated Title I of GINA.

(ii) If an employer directs his employees to undergo mandatory genetic testing in order to be eligible for health benefits, the employer has committed a Title II violation.

(iii) If an employer or union amends a health plan to require an individual to undergo a genetic test, then the employer or union is liable for a violation of Title II. In addition, the health plan's implementation of the requirement may subject the health plan to liability under Title I.

(c) *Relationship to authorities under GINA Title I.* GINA Title II does not prohibit any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan from engaging in any action that is authorized under any provision of law noted in §1635.11(b) of this part, including any implementing regulations noted in §1635.11(b).

(d) *Relationship to HIPAA Privacy Regulations.* This part does not apply to genetic information that is protected health information subject to the regulations issued by the Secretary of Health and Human Services pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

§ 1635.12 Medical information that is not genetic information.

(a) *Medical information about a manifested disease, disorder, or pathological condition.* (1) A covered entity shall not be considered to be in violation of this part based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component.

(2) Notwithstanding paragraph (a)(1) of this section, the acquisition, use, and disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition is subject to applicable limitations under sections 103(d)(1)–(4) of the Americans with Disabilities Act (42 U.S.C. 12112(d)(1)–(4)), and regulations at 29 CFR 1630.13, 1630.14, and 1630.16.

(b) *Genetic information related to a manifested disease, disorder, or pathological condition.* Notwithstanding paragraph (a) of this section, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions in sections 202 through 206 of GINA and §§1635.4 through 1635.9 of this part.

PART 1640—PROCEDURES FOR COORDINATING THE INVESTIGATION OF COMPLAINTS OR CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY SUBJECT TO THE AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973

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AUTHORITY: 5 U.S.C. 301; 29 U.S.C. 794(d); 42 U.S.C. 12117(b).

SOURCE: 59 FR 39904, 39908, Aug. 4, 1994, unless otherwise noted.

§ 1640.1 Purpose and application.

(a) This part establishes the procedures to be followed by the Federal agencies responsible for processing and resolving complaints or charges of employment discrimination filed against recipients of Federal financial assistance when jurisdiction exists under both section 504 and title I.

(b) This part also repeats the provisions established by 28 CFR 35.171 for determining which Federal agency shall process and resolve complaints or charges of employment discrimination:

(1) That fall within the overlapping jurisdiction of titles I and II (but are not covered by section 504); and

(2) That are covered by title II, but not title I (whether or not they are also covered by section 504).

(c) This part also describes the procedures to be followed when a complaint or charge arising solely under section 504 or title I is filed with a section 504 agency or the EEOC.

(d) This part does not apply to complaints or charges against Federal contractors under section 503 of the Rehabilitation Act.

(e) This part does not create rights in any person or confer agency jurisdiction not created or conferred by the ADA or section 504 over any complaint or charge.

§ 1640.2 Definitions.

As used in this part, the term:

Americans with Disabilities Act of 1990 or *ADA* means the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, or his or her designee.

Chairman of the Equal Employment Opportunity Commission refers to the Chairman of the United States Equal Employment Opportunity Commission, or his or her designee.

Civil Rights Division means the Civil Rights Division of the United States Department of Justice.

Designated agency means any one of the eight agencies designated under §35.190 of 28 CFR part 35 (the Department's title II regulation) to implement and enforce title II of the ADA with respect to the functional areas within their jurisdiction.

Dual-filed complaint or charge means a complaint or charge of employment discrimination that:

(1) Arises under both section 504 and title I;

(2) Has been filed with both a section 504 agency that has jurisdiction under section 504 and with the EEOC, which has jurisdiction under title I; and

(3) Alleges the same facts and raises the same issues in both filings.

Due weight shall mean, with respect to the weight a section 504 agency or the EEOC shall give to the other agency's findings and conclusions, such full and careful consideration as is appropriate, taking into account such factors as:

(1) The extent to which the underlying investigation is complete and the evidence is supportive of the findings and conclusions;

(2) The nature and results of any subsequent proceedings;

(3) The extent to which the findings, conclusions and any actions taken:

(i) Under title I are consistent with the effective enforcement of section 504; or

(ii) Under section 504 are consistent with the effective enforcement of title I; and

(4) The section 504 agency's responsibilities under section 504 or the EEOC's responsibilities under title I.

Equal Employment Opportunity Commission or *EEOC* refers to the United States Equal Employment Opportunity Commission, and, when appropriate, to

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any of its headquarters, district, area, local, or field offices.

Federal financial assistance shall have the meaning, with respect to each section 504 agency, as defined in such agency's regulations implementing section 504 for Federally-assisted programs.

Program or activity shall have the meaning defined in the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Public entity means:

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act, 45 U.S.C. 502(8)).

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under such program.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Section 504 agency means any Federal department or agency that extends Federal financial assistance to programs or activities of recipients.

Title I means title I of the ADA.

Title II means subtitle A of title II of the ADA.

§ 1640.3 Exchange of information.

The EEOC, section 504 agencies, and designated agencies shall share any information relating to the employment policies and practices of a respondent that may assist each agency in carrying out its responsibilities, to the extent permissible by law. Such information shall include, but is not limited to, complaints, charges, investigative files, compliance review reports and

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files, affirmative action programs, and annual employment reports.

§ 1640.4 Confidentiality.

(a) When a section 504 agency or a designated agency receives information obtained by the EEOC, such agency shall observe the confidentiality requirements of section 706(b) and section 709(e) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(b) and 2000e-8(e)), as incorporated by section 107(a) of the ADA, to the same extent as these provisions would bind the EEOC, except when the agency receives the same information from a source independent of the EEOC. Agency questions concerning the confidentiality requirements of title I shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel, the EEOC.

(b) When the EEOC receives information from a section 504 or a designated agency, the EEOC shall observe any confidentiality requirements applicable to that information.

§ 1640.5 Date of receipt.

A complaint or charge of employment discrimination is deemed to be filed, for purposes of determining timeliness, on the date the complaint or charge is first received by a Federal agency with section 504 or ADA jurisdiction, regardless of whether it is subsequently transferred to another agency for processing.

§ 1640.6 Processing of complaints of employment discrimination filed with an agency other than the EEOC.

(a) *Agency determination of jurisdiction.* Upon receipt of a complaint of employment discrimination, an agency other than the EEOC shall:

(1) Determine whether it has jurisdiction over the complaint under section 504 or under title II of the ADA; and

(2) Determine whether the EEOC may have jurisdiction over the complaint under title I of the ADA.

(b) *Referral to the Civil Rights Division.* If the agency determines that it does not have jurisdiction under section 504 or title II, and determines that the EEOC does not have jurisdiction under title I, the agency shall promptly refer

the complaint to the Civil Rights Division. The Civil Rights Division shall determine if another Federal agency may have jurisdiction over the complaint under section 504 or title II, and, if so, shall promptly refer the complaint to a section 504 or a designated agency with jurisdiction over the complaint.

(c) *Referral to the EEOC*—(1) *Referral by an agency without jurisdiction.* If an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and processing under title I of the ADA.

(2) *Referral by a section 504 agency.* (i) A section 504 agency that otherwise has jurisdiction over a complaint of employment discrimination under section 504 shall promptly refer to the EEOC, for investigation and processing under title I of the ADA, any complaint of employment discrimination that solely alleges discrimination against an individual (and that does not allege discrimination in both employment and in other practices or services of the respondent or a pattern or practice of employment discrimination), unless:

(A) The section 504 agency determines that the EEOC does not have jurisdiction over the complaint under title I; or

(B) The EEOC has jurisdiction over the complaint under title I, but the complainant, either independently, or following receipt of the notification letter required to be sent to the complainant pursuant to paragraph (c)(2)(ii) of this section, specifically requests that the complaint be investigated by the section 504 agency.

(ii) Prior to referring an individual complaint of employment discrimination to the EEOC pursuant to paragraph (c)(2)(i) of this section (but not prior to making such a referral pursuant to paragraph (c)(1) of this section), a section 504 agency that otherwise has jurisdiction over the complaint shall promptly notify the complainant, in writing, of its intention to make such a referral. The notice letter shall:

(A) Inform the complainant that, unless the agency receives a written request from the complainant within twenty days of the date of the notice letter requesting that the agency retain the complaint for investigation, the agency will forward the complaint to the EEOC for investigation and processing; and

(B) Describe the basic procedural differences between an investigation under section 504 and an investigation under title I, and inform the complainant of the potential for differing remedies under each statute.

(3) *Referral by a designated agency.* A designated agency that does not have section 504 jurisdiction over a complaint of employment discrimination and that has determined that the EEOC may have jurisdiction over the complaint under title I shall promptly refer the complaint to the EEOC.

(4) *Processing of complaints referred to the EEOC.* (i) A complaint referred to the EEOC in accordance with this section by an agency with jurisdiction over the complaint under section 504 shall be deemed to be a dual-filed complaint under section 504 and title I. When a section 504 agency with jurisdiction over a complaint refers the complaint to the EEOC, the section 504 agency shall defer its processing of the complaint pursuant to §1640.10, pending resolution by the EEOC.

(ii) A complaint referred to the EEOC by an agency that has jurisdiction over the complaint solely under title II (and not under section 504) will be treated as a complaint filed under title I only.

(iii) Any complaint referred to the EEOC pursuant to this section shall be processed by the EEOC under its title I procedures.

(d) *Retention by the agency for investigation*—(1) *Retention by a section 504 agency.* A section 504 agency shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under section 504, and one or more of the following conditions are met:

(i) The EEOC does not have jurisdiction over the complaint under title I; or

(ii) The EEOC has jurisdiction over the complaint, but the complainant elects to have the section 504 agency

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process the complaint and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to paragraph (c)(2)(ii) of this section; or

(iii) The complaint alleges discrimination in both employment and in other practices or services of the respondent that are covered by section 504; or

(iv) The complaint alleges a pattern or practice of employment discrimination.

(2) *Retention by a designated agency.* A designated agency that does not have jurisdiction over the complaint under section 504 shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under title II of the ADA and that the EEOC does not have jurisdiction over the complaint under title I.

(3) *Processing of complaints retained by an agency.* Any complaint retained for investigation and processing by an agency pursuant to paragraphs (d)(1) and (d)(2) of this section will be investigated and processed under section 504, title II, or both, as applicable, and will not be considered to be dual filed under title I.

§ 1640.7 Processing of charges of employment discrimination filed with the EEOC.

(a) *EEOC determination of jurisdiction.* Upon receipt of a charge of employment discrimination, the EEOC shall:

(1) Determine whether it has jurisdiction over the charge under title I of the ADA. If it has jurisdiction, except as provided in paragraph (b)(2) of this section, the EEOC shall process the charge pursuant to title I procedures.

(2) If the EEOC determines that it does not have jurisdiction under title I, the EEOC shall promptly refer the charge to the Civil Rights Division. The Civil Rights Division shall determine if a Federal agency may have jurisdiction over the charge under section 504 or title II, and, if so, shall refer the charge to a section 504 agency or to a designated agency with jurisdiction over the complaint.

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(b) *Retention by the EEOC for investigation.* (1) The EEOC shall retain a charge for investigation when it determines that it has jurisdiction over the charge under title I.

(2) *Referral to an agency.* Any charge retained by the EEOC for investigation and processing will be investigated and processed under title I only, and will not be deemed dual filed under section 504, except that ADA cause charges (as defined in 29 CFR 1601.21) that also fall within the jurisdiction of a section 504 agency and that the EEOC (or the Civil Rights Division, if such a charge is against a government, governmental agency, or political subdivision) has declined to litigate shall be referred to the appropriate section 504 agency for review of the file and any administrative or other action deemed appropriate under section 504. Such charges shall be deemed complaints, dual filed under section 504, solely for the purposes of the agency review and action described in this paragraph. The date of such dual filing shall be deemed to be the date the complaint was received by the EEOC.

§ 1640.8 Processing of complaints or charges of employment discrimination filed with both the EEOC and a section 504 agency.

(a) *Procedures for handling dual-filed complaints or charges.* As between the EEOC and a section 504 agency, except as provided in paragraph (e) of this section, a complaint or charge of employment discrimination that is dual filed with both the EEOC and a section 504 agency shall be processed as follows:

(1) *EEOC processing.* The EEOC shall investigate and process the charge when the EEOC determines that it has jurisdiction over the charge under title I and the charge solely alleges employment discrimination against an individual, unless the charging party elects to have the section 504 agency process the charge and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to § 1640.6(c)(2)(ii).

(2) *Section 504 agency processing.* A section 504 agency shall investigate and process the complaint when the

agency determines that it has jurisdiction over the complaint under section 504, and:

(i) The complaint alleges discrimination in both employment and in other practices or services of the respondent; or

(ii) The complaint alleges a pattern or practice of discrimination in employment; or

(iii) In the case of a complaint solely alleging employment discrimination against an individual, the complainant elects to have a section 504 agency process the complaint and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to § 1640.6(c)(2)(ii).

(b) *Referral to the Civil Rights Division.* If the EEOC determines that it does not have jurisdiction under title I, and the section 504 agency determines that it does not have jurisdiction under section 504 or title II, the complaint or charge shall be promptly referred to the Civil Rights Division. The Civil Rights Division shall determine if another Federal agency may have jurisdiction over the complaint under section 504 or title II, and, if so, shall promptly refer the complaint to a section 504 or a designated agency with jurisdiction over the complaint.

(c) *Procedures for determining whether a complaint or charge has been dual filed.* The EEOC and each agency with jurisdiction to investigate and process complaints of employment discrimination under section 504 shall jointly develop procedures for determining whether complaints or charges of discrimination have been dual filed with the EEOC and with one or more other agencies.

(d) *Notification of deferral.* The agency required to process a dual-filed complaint or charge under this section shall notify the complainant or charging party and the respondent that the complaint or charge was dual filed with one or more other agencies and that such other agencies have agreed to defer processing and will take no further action except as provided in § 1640.10 or § 1640.11, as applicable.

(e) *Exceptions.* When special circumstances make deferral as provided

in this section inappropriate, the EEOC, and an agency with investigative authority under section 504, may jointly determine to reallocate investigative responsibilities. Special circumstances include, but are not limited to, cases in which the EEOC has already commenced its investigation at the time that the agency discovers that the complaint or charge is a dual-filed complaint or charge in which the complainant has elected section 504 processing, alleged discrimination in both employment and in other practices or services of the respondent, or alleged a pattern or practice of employment discrimination.

§ 1640.9 Processing of complaints or charges of employment discrimination filed with a designated agency and either a section 504 agency, the EEOC, or both.

(a) *Designated agency processing.* A designated agency shall investigate and process a complaint that has been filed with it and with the EEOC, a section 504 agency, or both, when either of the following conditions is met:

(1) The designated agency determines that it has jurisdiction over the complaint under title II and that neither the EEOC nor a section 504 agency (other than the designated agency, if the designated agency is also a section 504 agency) has jurisdiction over the complaint; or

(2) The designated agency determines that it has jurisdiction over the complaint under section 504 and the complaint meets the requirements for processing by a section 504 agency set forth in § 1640.8(a)(2).

(b) *Referral by a designated agency.* A designated agency that has jurisdiction over a complaint solely under title II (and not under section 504) shall forward a complaint that has been filed with it and with the EEOC, a section 504 agency, or both, to either the EEOC or to a section 504 agency, as follows:

(1) If the designated agency determines that the EEOC is the sole agency, other than the designated agency, with jurisdiction over the complaint, the designated agency shall forward the complaint to the EEOC for processing under title I; or

(2) If the designated agency determines that the section 504 agency is

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the sole agency, other than the designated agency, with jurisdiction over the complaint, the designated agency shall forward the complaint to the section 504 agency for processing under section 504; or

(3) If the designated agency determines that both the EEOC and a section 504 agency have jurisdiction over the complaint, the designated agency shall forward the complaint to the EEOC if it determines that the complaint solely alleges employment discrimination against an individual, or it shall forward the complaint to the section 504 agency if it determines that the complaint meets the requirements for processing by a section 504 agency set out in §1640.8(a)(2)(i) or (a)(2)(ii).

§ 1640.10 Section 504 agency review of deferred complaints.

(a) *Deferral by the section 504 agency.* When a section 504 agency refers a complaint to the EEOC pursuant to §1640.6(c)(2) or when it is determined that, as between the EEOC and a section 504 agency, the EEOC is the agency that shall process a dual-filed complaint or charge under §1640.8(a)(1) or §1640.8(e), the section 504 agency shall defer further action until:

(1) The EEOC issues a no cause finding and a notice of right-to-sue pursuant to 29 CFR 1601.19; or

(2) The EEOC enters into a conciliation agreement; or

(3) The EEOC issues a cause finding and a notice of failure of conciliation pursuant to 29 CFR 1601.21, and:

(i) If the recipient is not a government, governmental agency, or political subdivision, the EEOC completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28; or

(ii) If the recipient is a government, governmental agency, or political subdivision, the EEOC refers the charge to the Civil Rights Division in accordance with 29 CFR 1601.29, and the Civil Rights Division completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28(d); or

(4) The EEOC or, when a case has been referred pursuant to 29 CFR 1601.29, the Civil Rights Division, otherwise resolves the charge.

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(b) *Notification of the deferring agency.* The EEOC or the Civil Rights Division, as appropriate, shall notify the agency that has deferred processing of the charge upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the EEOC or the Civil Rights Division, as appropriate, has resolved the complaint or charge, the agency shall promptly determine what further action by the agency is warranted. In reaching that determination, the agency shall give due weight to the findings and conclusions of the EEOC and to those of the Civil Rights Division, as applicable. If the agency proposes to take an action inconsistent with the EEOC's or the Civil Rights Division's findings and conclusions as to whether a violation has occurred, the agency shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the EEOC office that processed the complaint. In the written notification, the agency shall state the action that it proposes to take and the basis of its decision to take such action.

(d) *Provision of information.* Upon written request, the EEOC or the Civil Rights Division shall provide the section 504 agency with any materials relating to its resolution of the charge, including its findings and conclusions, investigative reports and files, and any conciliation agreement.

§ 1640.11 EEOC review of deferred charges.

(a) *Deferral by the EEOC.* When it is determined that a section 504 agency is the agency that shall process a dual-filed complaint or charge under §1640.8(a)(2) or §1640.8(e), the EEOC shall defer further action until the section 504 agency takes one of the following actions:

(1) Makes a finding that a violation has not occurred;

(2) Enters into a voluntary compliance agreement;

(3) Following a finding that a violation has occurred, refers the complaint to the Civil Rights Division for judicial enforcement and the Civil Rights Division resolves the complaint;

(4) Following a finding that a violation has occurred, resolves the complaint through final administrative enforcement action; or

(5) Otherwise resolves the charge.

(b) *Notification of the EEOC.* The section 504 agency shall notify the EEOC upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the section 504 agency has resolved the complaint, the EEOC shall promptly determine what further action by the EEOC is warranted. In reaching that determination, the EEOC shall give due weight to the section 504 agency's findings and conclusions. If the EEOC proposes to take an action inconsistent with the section 504 agency's findings and conclusions as to whether a violation has occurred, the EEOC shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the section 504 agency that processed the complaint. In the written notification, the EEOC shall state the action that it proposes to take and the basis of its decision to take such action.

(d) *Provision of information.* Upon written request, the section 504 agency shall provide the EEOC with any materials relating to its resolution of the complaint, including its conclusions, investigative reports and files, and any voluntary compliance agreement.

§ 1640.12 Standards.

In any investigation, compliance review, hearing or other proceeding, the standards used to determine whether section 504 has been violated in a complaint alleging employment discrimination shall be the standards applied under title I of the ADA and the provisions of sections 501 through 504, and 510, of the ADA, as such sections relate to employment. Section 504 agencies shall consider the regulations and appendix implementing title I of the ADA, set forth at 29 CFR part 1630, and case law arising under such regulations, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

§ 1640.13 Agency specific memoranda of understanding.

When a section 504 agency amends its regulations to make them consistent with title I of the ADA, the EEOC and the individual section 504 agency may elect to enter into a memorandum of understanding providing for the investigation and processing of complaints dual filed under both section 504 and title I of the ADA by the section 504 agency.

PART 1641—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

- 1641.1 Purpose and application.
- 1641.2 Exchange of information.
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- 1641.4 Standards for investigations, hearings, determinations and other proceedings.
- 1641.5 Processing of complaints filed with OFCCP.
- 1641.6 Processing of charges filed with EEOC.
- 1641.7 Review of this part.
- 1641.8 Definitions.

AUTHORITY: 42 U.S.C. 12117(b).

SOURCE: 57 FR 2962, 2964, Jan. 24, 1992, unless otherwise noted.

§ 1641.1 Purpose and application.

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section