

Federal Labor Relations Authority

§ 2416.101

Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Authority, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Authority may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Authority institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Authority may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Authority agent who knowingly and willfully violates the prohibitions and requirements of this rule.

PART 2415—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: E.O. 12674, 54 FR 15159 (April 12, 1989), as modified by E.O. 12731, 55 FR 42547 (October 17, 1990); 5 CFR 735.101, *et seq.*, 2634.101, *et seq.*, 2635.101, *et seq.*, and 2637.101, *et seq.*

§ 2415.1 Employee responsibilities and conduct.

The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, respectively, hereby adopt the rules and regulations contained in parts 735, 2634, 2635, and 2637 of title 5 of the Code of Federal Regulations, prescribing standards of conduct and responsibilities,

and governing statements reporting employment and financial interests for officers and employees, including special Government employees, for application, as appropriate, to the officers and employees, including special Government employees, of the Authority, the General Counsel and the Panel.

[74 FR 51742, Oct. 8, 2009]

PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25881, 25885, July 8, 1988, unless otherwise noted.

§ 2416.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

[74 FR 51742, Oct. 8, 2009]

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§ 2416.102 **Application.**

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

[74 FR 51742, Oct. 8, 2009]

§ 2416.103 **Definitions.**

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for

listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Qualified individual with disabilities means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with disabilities who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified disabled person* as that term is defined for purposes of employment in 29 CFR 1615.103, which is made applicable to this regulation by § 2416.140.

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 by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

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Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

[53 FR 25881, 25885, July 8, 1988, as amended at 74 FR 51742, Oct. 8, 2009]

§§ 2416.104–2416.109 [Reserved]

§ 2416.110 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

[53 FR 25881, 25885, July 8, 1988. Redesignated at 75 FR 48273, Aug. 10, 2010]

§§ 2416.111–2416.129 [Reserved]

§ 2416.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination

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on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of individuals without a disability from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

[74 FR 51743, Oct. 8, 2009]

§§ 2416.131–2416.139 [Reserved]

§ 2416.140 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

[74 FR 51743, Oct. 8, 2009]

§§ 2416.141–2416.148 [Reserved]

§ 2416.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2416.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any pro-

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gram or activity conducted by the agency.

[74 FR 51743, Oct. 8, 2009]

§ 2416.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2416.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home

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visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2416.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of § 2416.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

[74 FR 51743, Oct. 8, 2009]

§ 2416.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Bar-

riers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

[74 FR 51744, Oct. 8, 2009]

§§ 2416.152-2416.159 [Reserved]

§ 2416.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program

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or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2416.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

[53 FR 25881, 25885, July 8, 1988, as amended at 74 FR 51744, Oct. 8, 2009]

§§ 2416.161–2416.169 [Reserved]

§ 2416.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Equal Employment Opportunity, Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424-0001.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and useable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2416.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25881 and 25885, July 8, 1988, as amended at 53 FR 25881, July 8, 1988; 68 FR 10953, Mar. 7, 2003; 74 FR 51744, Oct. 8, 2009]

§§ 2416.171-2416.999 [Reserved]

PART 2417—TESTIMONY BY EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

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Subpart C—Schedule of Fees

- 2417.301 Fees.

Subpart D—Penalties

- 2417.401 Penalties.

AUTHORITY: 5 U.S.C. 7105; 31 U.S.C. 9701; 44 U.S.C. 3101-3107.

SOURCE: 74 FR 11640, Mar. 19, 2009, unless otherwise noted.

Subpart A—General Provisions

§ 2417.101 Scope and purpose.

(a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:

(1) The production or disclosure of official information or records by employees, members, advisors, and consultants of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority or the Federal Service Impasses Panel; and

(2) The testimony of current and former employees, members, advisors, and consultants of the Authority, the General Counsel or the Panel relating to official information, official duties or official records, in connection with civil federal or state litigation in which the Authority, the General Counsel or the Panel is not a party.

(b) The FLRA intends these provisions to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the involvement of employees in issues unrelated to the mission of the FLRA;

(3) Maintain the impartiality of employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the FLRA.

(c) In providing for these requirements, the FLRA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of the FLRA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2417.102 Applicability.

This part applies to demands and requests to current and former employees, members, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in civil legal proceedings in which the Authority, the General Counsel or the Panel is not a named party. This part does not apply to:

(a) Demands upon or requests for an employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Authority, the General Counsel or the Panel;

(b) Demands upon or requests for a former employee to testify as to matters in which the former employee was not directly or materially involved while at the Authority, the General Counsel or the Panel;

(c) Requests for the release of records under the Freedom of Information Act,