

§ 1640.4

29 CFR Ch. XIV (7–1–13 Edition)

files, compliance review reports and 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: