

§ 1640.8

29 CFR Ch. XIV (7-1-13 Edition)

(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

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.