

rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.

**§ 60-741.83 Rulings and interpretations.**

Rulings under or interpretations of the act and this part shall be made by the Deputy Assistant Secretary.

**§ 60-741.84 Effective date.**

This part shall become effective August 29, 1996, and shall not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs as required to comply with this part by December 27, 1996.

APPENDIX A TO PART 60-741—GUIDELINES ON A CONTRACTOR'S DUTY TO PROVIDE REASONABLE ACCOMMODATION

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60-741.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under section 503, like reasonable accommodation required under the ADA, is a part of the nondiscrimination obligation. See EEOC appendix cited in this paragraph. Affirmative action is unique to section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of an employee with a known disability who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60-741.2(t), an individual with a disability is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees of whose disability the contractor has actual knowledge. As stated in § 60-741.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they begin their employment duties, to indicate whether they may have a disability and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of individuals who "self-identify" in this way as to proper placement and appropriate accommodation. Moreover, § 60-741.44(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the

job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, e.g., a State vocational rehabilitation agency, or if Federal, State or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the individual with a disability should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60-741.2(v) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the individual with a disability in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate State vocational rehabilitation services agency, the

Equal Employment Opportunity Commission (1-800-669-EEOC (voice), 1-800-800-3302 (TDD)), the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (1-800-JAN-7234), private disability organizations, and other employers.

6. With respect to accommodations that can permit an employee with a disability to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and brailled or large print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by individuals with a disability—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in §60-741.2(v) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified individual with a disability cannot perform to another position. Accordingly, if a clerical employee is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind individual with an assistant to perform that

duty; in such a case, the assistant would be performing an essential function of the job for the individual with a disability. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit persons who cannot work a standard schedule because of the need to obtain medical treatment, or persons with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider known applicants with disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned individual with a disability at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled. It should also be noted that the contractor is not required to promote an individual with a disability as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) providing information regarding job vacancies in a form accessible to the vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of

his or her disability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring an applicant with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

#### APPENDIX B TO PART 60-741—SAMPLE INVITATION TO SELF-IDENTIFY

NOTE: When the invitation to self-identify is being extended prior to an offer of employment, as is permitted in limited circumstances under §60-741.42(a), paragraph 2(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to section 503 of the Rehabilitation Act of 1973, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. If you have a disability and would like to be considered under the affirmative action program, please tell us. You may inform us of your desire to benefit under the program at this time and/or at any time in the future. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.] Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. Information you submit about your disability will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by OFCCP or the Americans with Disabilities Act, may be informed. The information provided will be used only in ways that are not inconsistent with section 503 of the Rehabilitation Act.

2. If you are an individual with a disability, we would like to include you under the affirmative action program. It would assist us if you tell us about (i) any special

methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (ii) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations.

#### APPENDIX C TO PART 60-741—REVIEW OF PERSONNEL PROCESSES

The following is a set of procedures which contractors may use to meet the requirements of §60-741.44(b):

1. The application or personnel form of each known applicant with a disability should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known individual with a disability should include (i) the identification of each promotion for which the employee with a disability was considered, and (ii) the identification of each training program for which the individual with a disability was considered.

3. In each case where an employee or applicant who is an individual with a disability is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered. The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with §60-741.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place an individual with a disability on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with §60-741.23(d).

[61 FR 19350, May 1, 1996, as amended at 63 FR 59659, Nov. 4, 1998]

#### APPENDIX D TO PART 60-741—GUIDELINES REGARDING POSITIONS ENGAGED IN CARRYING OUT A CONTRACT

As stated in §60-741.4(a)(2), with respect to the contractor's employment decisions and practices occurring before October 29, 1992, this part 60-741 applies only to employees who were employed in, and applicants for, positions that were engaged in carrying out a Government contract.<sup>1</sup> The regulatory definition has two prongs. Under §60-741.4(a)(2)(i)(A) ("prong A"), positions are deemed to have been engaged in carrying out a Government contract if their duties included work that fulfilled a contractual obligation, or work that was necessary to, or that facilitated, performance of the contract or a provision of the contract. Alternatively, under §60-741.4(a)(2)(i)(B) ("prong B"), positions are deemed to have been engaged in carrying out a Government contract if, pursuant to principles set forth in the Federal Acquisition Regulation (FAR) at 48 CFR Ch. 1, part 31, the cost of the positions or a portion of their cost was allocable to a contract as a direct cost, or 2 percent or more of the cost was allocable as an indirect cost to Government contracts considered as a group. This appendix provides guidance as to the application of prong A of the definition.

1. The regulatory definition includes positions whose duties involved work that fulfilled a contractual obligation. Such work includes work producing the goods or providing the services that were the object of the contract and also work that fulfilled ancillary contract obligations. For example, if a contract required the contractor to keep certain cost records or to meet certain quality control standards, employees who were engaged in such functions were fulfilling a contractual obligation.

2. Positions are also included if their duties included work that was necessary to or that facilitated performance of the contract.

<sup>1</sup>Prior to October 29, 1992, section 503 applied only insofar as the contractor was "employing persons to carry out" a Government contract. On that date, the act was amended to apply to all of a covered contractor's work force, irrespective of whether particular positions are engaged in carrying out a Government contract. Accordingly, the guidance contained in this appendix will be relied on by OFCCP in monitoring and enforcing compliance with section 503 only with respect to the contractor's employment decisions and practices occurring before October 29, 1992. (Moreover, prior to that date, section 503 covered only contractors holding a contract "in excess of \$2500"; this figure was amended on October 29, 1992 to "in excess of \$10,000." Consequently, this appendix makes reference to the \$2500 threshold level.)

The inclusion of work of this character is intended to reflect the practical reality that performance of a contract generally requires the cooperation of a variety of individuals engaged in auxiliary and related functions beyond direct production of the goods or provision of the services that are the object of the contract.

3. To give one example, a contract for production and sale of goods to the Government commonly requires the work not only of the production employees assembling the goods, but also of those engaged in functions such as repairing the machinery used in producing the goods; maintaining the plant and facilities; assuring quality control and security; storing the goods after production; delivering them to the Government; hiring, paying, and providing personnel services for the employees engaged in contract-related work; keeping financial and accounting records; performing related office and clerical tasks; and supervising or managing the employees engaged in such tasks. This list is not intended to be exhaustive, but only to illustrate that a variety of functions may commonly be involved in carrying out a contract.

4. Whether a particular position was engaged in carrying out a contract depends on the facts as to the nature of the duties that were actually performed and their relationship to contract performance. A position is included if its duties included work that furthered or contributed to the performance of the contract. The work need not have been essential or indispensable to performance of the contract. It is sufficient that it was useful or that it benefitted or contributed to carrying out the contract.

5. Nor is it material that the work was not required by an express contract term. For example, a contract to provide transportation services may not have explicitly incorporated terms requiring maintenance and repair of the means of transportation to keep them in safe operating condition. Such work, however, was implicitly necessary to carry out the contract.

6. It is irrelevant that the contractor could have performed the contract some other way, without making use of a particular function or particular employees, if the way the contractor chose to carry out the contract does in fact make use of them. For example, if a contractor employed three quality control inspectors, or used three quality control processes, to monitor the manufacture of goods for sale to the Government, all three were involved in carrying out the contract, notwithstanding any claim that two would have been sufficient. If a contractor manufactured goods at its plant in St. Louis for delivery in Chicago, employees who transported the goods were carrying out the contract, regardless whether the contractor could have made the goods locally at its

plant in Chicago. If a contractor employed security guards or watchmen to protect its plant producing goods for the Government from vandalism or theft of equipment, because in its business judgment it was prudent to do so, employees who were engaged in those tasks were contributing to performance of the contract and were covered.

7. If a position's regular duties included work that contributed to the performance of the contract, and the contract met the act's dollar threshold for coverage, it is irrelevant that such work was only a portion of the position's total duties or that it took only a small amount of time. For example, a Government agency may have contracted to lease a photocopying machine under terms that obligated the leasing company to provide repair and maintenance service. The technician assigned to provide such service was "carrying out the contract" regardless whether he or she provided similar service for numerous private customers and spent only a small fraction of his or her time working on the agency's machine. Similarly, individuals who worked on an assembly line manufacturing automobiles, a portion of which were sold under contract to the Government, while the bulk were sold commercially, were covered. That 95% of the vehicles they produced were sold elsewhere does not negate the fact that the individuals were carrying out the contract to make vehicles for the Government.

8. A group of employees may also have performed duties that simultaneously contributed to performance of both Government and non-Government contracts. In this situation, if the contract exceeded \$2500 and the duties of the position in fact contributed to carrying out the contract, the position was covered. For example, the Government may have contracted with airline carriers to provide transportation to Federal employees performing official duties. The contract was performed through the work of employees including the flight crew, the ground maintenance crew, the baggage handlers, the ticketing agents, the airport and gate staff, and other corporate personnel. Federal employees probably typically formed only a small percentage of an airline's passengers. Nonetheless, the pilots who flew the planes and the other staff were carrying out the terms of the contract.

9. These principles are illustrated by the final decision of the Department in *OFCCP v. Monongahela Railroad Co.*, 85-OFC-2 (Administrative Law Judge Recommended Decision, April 2, 1986), *aff'd*, (Deputy Under Secretary for Employment Standards, March 11, 1987). *Monongahela* involved the interpretation of the term "necessary" in the context of the definition of the term "subcontract" under this part 60-741. "Subcontract" is defined in relevant part as any agreement for the furnishing of supplies or services "which in

whole or in part is necessary to the performance of any one or more [Government] contracts." The decision held that a railroad company's transport of coal that was used by a power company to generate electricity was "necessary" to the performance of the power company's obligation to supply the Government with power and that the railroad company was therefore a covered "subcontractor". The decision reached this result even though numerous other carriers also transported coal to the power company, the coal that the carrier delivered was used to generate electricity for the Government and for nongovernmental customers alike, and the power company sold only a small fraction (less than 1%) of its output to the Government. That is, the decision found that the crucial factor is whether the activity contributes to the performance of a Government contract, regardless of whether the contractor could have performed the contract some other way, and regardless of whether the activity contributes as well, and predominantly, to carrying out non-Government contracts.

10. Although the act broadly reached all positions that contributed to or facilitated the performance of the Government contract, its coverage was not limitless. First, positions were covered only if they bore an appropriate relationship to a covered contract. The contract must have been for the purchase, sale, or use of personal property or nonpersonal services, must have been for an amount in excess of \$2500, and must not have been otherwise exempt.

11. Second, the breadth of coverage depended to a large extent on how the contractor chose to organize its work force to perform its contract obligations. A contractor who segregated contract from noncontract work necessarily employed fewer persons to carry out its contracts than one who did not. To continue the example given above, if a plant with several assembly lines produced automobiles, some of which were shipped to the Government and others sold commercially, the application of section 503 would have been limited if the Government contract automobiles were made on only one of the assembly lines. In that case, employees who were on the other lines, which never produced automobiles for the Government, were outside the act. If, however, the contractor did not segregate the contract from noncontract production, the employees on each of the lines were covered.

12. Third, while the relationship between the work of a position and the performance of the contract need not have been direct, the relationship must have been real and not hypothetical. For example, a firm may have done substantial business with both the Government and private customers. Individuals who were employed to plan and design new facilities that were intended for use with

non-Government work would not be deemed to have been covered merely because of the possibility that at some point in the future the facilities would be used to carry out Government contracts. Again, a firm may have been partly unionized and partly non-unionized. Assume the Government contract was performed exclusively in the non-union part of the work force. An individual who was assigned to represent management in dealing with the union would not have been covered simply because the arrangements he or she made with the union might subsequently influence the personnel practices followed for the nonunion employees as well.

13. Coverage depended on the regular or assigned duties and responsibilities of the position. A person that held a position did not go in and out of coverage as she performed first contract and then noncontract work if, throughout the period, one of the duties of the position was to perform contract-related work as the need or occasion arose. For example, the photocopy machine technician who was assigned responsibility to repair machines leased to the Government and to private firms was covered throughout the contract term, including the period before he or she first repaired the Government's machine. Discrimination against the employee was not permissible simply because the discrimination was effected on a day when the technician was servicing a private firm. Likewise, workers who were on an assembly line whose products were shipped at times to the Government and at times to private customers were covered, as were employees of the airline carrier whose duties included at times helping to transport Federal employees pursuant to a contract.

14. On the other hand, a person whose duties were permanently changed may have gained or lost coverage as a result. For example, an engineer who had been working on developing weapons under a contract with the military, and who accordingly was covered, may have been transferred to work on development of civilian aircraft for private customers. If the new position did not include any contract-related duties, the individual lost protection under the act at the time of the transfer.

15. It is the position's regular or assigned duties that were controlling. If a portion, however small, of a position's regular duties was necessary to or facilitated carrying out a Government contract, the position was covered. On the other hand, the isolated and unanticipated performance, outside the position's regular duties, of a contract-related task will not result in a finding of coverage. For example, suppose another employee of the photocopy machine company, whose regular duties were in no way contract-related, was unexpectedly needed to substitute for the technician who repaired the machine

leased to the Government. Assuming substitution in such situations was not one of the employee's regular or foreseeable duties, his or her isolated performance of the task on a particular occasion would not result in a finding of coverage. In some cases, there will be a formal written position description that will serve as evidence of the position's actual duties and responsibilities. In other cases, there may not be a written position description, or the position description may be inaccurate or incomplete. In all cases, however, it should be possible to identify the position's actual duties, and to make a determination of coverage on that basis.

16. The fact that a position is deemed not to have been engaged in carrying out a Government contract does not affect the individual's rights under the Americans with Disabilities Act of 1990.

**PART 60-742—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS**

Sec.

60-742.1 Purpose and application.

60-742.2 Exchange of information.

60-742.3 Confidentiality.

60-742.4 Standards for investigations, hearings, determinations and other proceedings.

60-742.5 Processing of complaints filed with OFCCP.

60-742.6 Processing of charges filed with EEOC.

60-742.7 Review of this part.

60-742.8 Definitions.

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

SOURCE: 57 FR 2962, 2965, Jan. 24, 1992, unless otherwise noted.

**§ 60-742.1 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 503. Nothing in this part is intended to create rights in any person.

**§ 60-742.2 Exchange of information.**

(a) EEOC and OFCCP shall share any information relating to the employment policies and practices of employers holding government contracts or subcontracts that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance review reports and files.

(b) All requests by third parties for disclosure of the information described in paragraph (a) of this section shall be coordinated with the agency which initially compiled or collected the information.

(c) Paragraph (b) of this section is not applicable to requests for data in EEOC files made by any state or local agency designated as a "FEP agency" with which EEOC has a charge resolution contract and a work-sharing agreement containing the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). However, such an agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Director of OFCCP.

**§ 60-742.3 Confidentiality.**

When the Department of Labor receives information obtained by EEOC, the Department of Labor shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964, as incorporated by section 107(a) of the ADA, as would EEOC, except in cases where DOL receives the same information from a source independent of EEOC. Questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.