

## Department of Justice

## § 42.605

### APPENDIX D—OJARS' REGULATIONS UNDER THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT, AS AMENDED, WHICH APPLY TO THIS SUBPART (28 CFR 42.205 AND 42.206)

EDITORIAL NOTE: For the text of appendix D, see §§42.205 and 42.206 of this part.

### Subpart H—Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance

AUTHORITY: E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 12067, 43 FR 28967, 3 CFR, 1978 Comp., p. 206.

SOURCE: Order No. 992-83, 48 FR 3577, Jan. 25, 1983, unless otherwise noted.

#### § 42.601 Purpose and application.

The purpose of this regulation is implement procedures for processing and resolving complaints of employment discrimination filed against recipients of Federal financial assistance subject to title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972, as amended, and provisions similar to title VI and title IX in Federal grant statutes. Enforcement of such provisions in Federal grant statutes is covered by this regulation to the extent they relate to prohibiting employment discrimination on the ground of race, color, national origin, religion or sex in programs receiving Federal financial assistance of the type subject to title VI or title IX. This regulation does not, however, apply to the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, as amended, the Comprehensive Employment Training Act of 1973, as amended, or Executive Order 11246.

#### § 42.602 Exchange of information.

EEOC and agencies shall share any information relating to the employment policies and practices of recipients of federal financial assistance 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, investigative files, conciliation or compliance agreements, and compliance review reports and files.

#### § 42.603 Confidentiality.

When an agency receives information obtained by EEOC, the agency shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII as would EEOC, except in cases where the agency receives the same information from a source independent of EEOC or has referred a joint complaint to EEOC under this regulation. In such cases, the agency may use independent source information or information obtained by EEOC under the agency's investigative authority in a subsequent title VI, title IX or revenue sharing act enforcement proceeding. Agency questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.

#### § 42.604 Standards for investigation, reviews and hearings.

In any investigation, compliance review, hearing or other proceeding, agencies shall consider title VII case law and EEOC Guidelines, 29 CFR parts 1604 through 1607, unless inapplicable, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

#### § 42.605 Agency processing of complaints of employment discrimination.

(a) Within ten days of receipt of a complaint of employment discrimination, an agency shall notify the respondent that it has received a complaint of employment discrimination, including the date, place and circumstances of the alleged unlawful employment practice.

(b) Within thirty days of receipt of a complaint of employment discrimination an agency shall:

(1) Determine whether it has jurisdiction over the complaint under title VI, title IX, or the revenue sharing act; and

(2) Determine whether EEOC may have jurisdiction over the complaint under title VII of or the Equal Pay Act.

(c) An agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint. At the same time, the agency shall notify the complainant and the respondent of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.

(d) If any agency determines that a complaint of employment discrimination is a joint complaint, then the agency may refer the complaint to EEOC. The agency need not consult with EEOC prior to such a referral. An agency referral of a joint complaint should occur within thirty days of receipt of the complaint.

(e) An agency shall refer to EEOC all joint complaints solely alleging employment discrimination against an individual. If an agency determines that special circumstances warrant its investigation of such a joint complaint, then the agency shall determine whether the complainant has filed a similar charge of employment discrimination with EEOC.

(1) If an agency determines that the complainant has filed a similar charge of employment discrimination with EEOC, then the agency may investigate the complaint if EEOC agrees to defer its investigation pending the agency investigation.

(2) If an agency determines that the complainant has not filed a similar charge of employment discrimination with the EEOC, then the agency may investigate the complaint if special circumstances warrant such action. In such cases, EEOC shall defer its investigation of the referred joint complaint pending the agency investigation.

(f) An agency shall not refer to EEOC a joint complaint alleging a pattern or practice of employment discrimination unless special circumstances warrant agency referral of the complaint to EEOC.

(g) If a joint complaint alleges discrimination in employment and in other practices of a recipient, an agency should, absent special cir-

cumstances, handle the entire complaint under the agency's own investigation procedures. In such cases, the agency shall determine whether the complainant has filed a similar charge of employment discrimination with EEOC. If such a charge has been filed, the agency and EEOC shall coordinate their activities. Upon agency request, EEOC should ordinarily defer its investigation pending the agency investigation.

(h) When a joint complaint is referred to EEOC for investigation, the agency shall advise EEOC of the relevant civil rights provision(s) applicable to the employment practices of the recipient, whether the agency wants to receive advance notice of any conciliation negotiations, whether the agency wants EEOC to seek information concerning the relationship between the alleged discrimination and the recipient's Federally assisted programs or activities and, where appropriate, whether a primary objective of the Federal financial assistance is to provide employment. The agency shall also notify the complainant and the recipient of the referral, the location of the EEOC office to which the complaint was referred, the identity of the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC. Specifically, the notice shall inform the recipient that the agency has delegated to EEOC its investigative authority under title VI, title IX, or the revenue sharing act, and the relevant act's implementing regulations. The agency, therefore, may use information obtained by EEOC under the agency's investigative authority in a subsequent title VI, title IX or revenue sharing act enforcement proceeding.

[Order No. 992-83, 48 FR 3577, Jan. 25, 1983, as amended at 61 FR 33658, June 28, 1996]

**§ 42.606 General rules concerning EEOC action on complaints.**

(a) A complaint of employment discrimination filed with an agency, which is transferred or referred to EEOC under this regulation, shall be deemed a charge received by EEOC. For all purposes under title VII and the

Equal Pay Act, the date such a complaint was received by an agency shall be deemed the date it was received by EEOC.

(b) When EEOC investigates a joint complaint it shall, where appropriate, seek sufficient information to allow the referring agency to determine whether the alleged employment discrimination is in a program or activity that receives Federal financial assistance and/or whether the alleged employment discrimination causes discrimination with respect to beneficiaries or potential beneficiaries of the assisted program.

(c) Upon referral of a joint complaint alleging a pattern or practice of employment discrimination, EEOC generally will limit its investigation to the allegation(s) which directly affect the complainant.

(d) If EEOC, in the course of an investigation of a joint complaint, is unable to obtain information from a recipient through voluntary means, EEOC shall consult with the referring agency to determine an appropriate course of action.

(e) If EEOC agrees to defer its investigation of a complaint of employment discrimination pending an agency investigation of the complaint, then EEOC shall give due weight to the agency's determination concerning the complaint.

**§ 42.607 EEOC dismissals of complaints.**

If EEOC determines that the title VII allegations of a joint complaint should be dismissed, EEOC shall notify the complainant and the recipient of the reason for the dismissal and the effect the dismissal has on the complainant's rights under the relevant civil rights provision(s) of the referring agency, and issue a notice of right to sue under title VII. At the same time, EEOC shall transmit to the referring agency a copy of EEOC's file.

**§ 42.608 Agency action on complaints dismissed by EEOC.**

Upon EEOC's transmittal of a dismissal under § 42.607 of this regulation, the referring agency shall determine within thirty days, what, if any, action the agency intends to take with respect to

the complaint and then notify the complainant and the recipient. In reaching that determination, the referring agency shall give due weight to EEOC's determination that the title VII allegations of the joint complaint should be dismissed. If the referring agency decides to take action with respect to a complaint that EEOC has dismissed for lack of reasonable cause to believe that title VII has been violated, the agency shall notify the Assistant Attorney General and the Chairman of the EEOC in writing of the action it plans to take and the basis of its decision to take such action.

**§ 42.609 EEOC reasonable cause determination and conciliation efforts.**

(a) If EEOC, after investigation of a joint complaint, determines that reasonable cause exists to believe that title VII has been violated, EEOC shall advise the referring agency, the complainant and the recipient of that determination and attempt to resolve the complaint by informal methods of conference, conciliation and persuasion. If EEOC would like the referring agency to participate in conciliation negotiations, EEOC shall so notify the agency and the agency shall participate. EEOC shall provide advance notice of any conciliation negotiations to referring agencies that request such notice, whether or not EEOC requests their participation in the negotiations.

(b) If EEOC's efforts to resolve the complaint by informal methods of conference, conciliation and persuasion fail, EEOC shall:

(1) Issue a notice of failure of conciliation to the recipient in accordance with 29 CFR 1601.25;

(2) Transmit to the referring agency a copy of EEOC's investigative file, including its Letter of Determination and notice of failure conciliation;

(3) If the recipient is not a government, governmental entity or political subdivision, determine whether EEOC will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII;

(4) If the recipient is a government, governmental entity or political subdivision, refer the matter to the Attorney General in accordance with 29 CFR 1601.29. The Attorney General, or his or

her delegate, will determine whether the Department of Justice will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII.

**§ 42.610 Agency enforcement of unresolved complaints.**

(a) Upon EEOC's transmittal of a reasonable cause determination and notice of failure of conciliation under § 42.609(b)(2) of this regulation, the referring agency shall determine, within thirty days, whether the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce. The referring agency shall give due weight to EEOC's determination that reasonable cause exists to believe that title VII has been violated.

(b) If the referring agency determines that the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall so notify the complainant and the recipient and determine whether further efforts to obtain voluntary compliance are warranted. In reaching that determination, the agency shall give due weight to the failure of EEOC's efforts to resolve the complaint by informal methods. If the referring agency determines that further efforts to obtain voluntary compliance are not warranted or if such further efforts fail, the agency shall initiate appropriate enforcement proceedings under its own regulations.

(c) If the referring agency determines that the recipient has not violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall notify the complainant, the recipient, the Assistant Attorney General and the Chairman of the EEOC in writing of the basis of that determination.

**§ 42.611 EEOC negotiated settlements and conciliation agreements.**

If the parties enter into a negotiated settlement (as described in 29 CFR 1601.20) prior to a determination or a conciliation agreement (as described in 29 CFR 1601.24) after a determination, EEOC shall notify the referring agency that the complaint has been settled. The agency shall take no further ac-

tion on the complaint of employment discrimination thereafter except that the agency may take the existence of the complaint into account in scheduling the recipient for a review under the agency's regulations.

**§ 42.612 Interagency consultation.**

(a) Before investigating whether the employment practices of a recipient of Federal financial assistance constitute a pattern or practice of unlawful discrimination or initiating formal administrative enforcement procedures on that basis, an agency shall, to the extent practical, consult with the Chairman of the EEOC and the Assistant Attorney General to assure that duplication of effort will be minimized.

(b) Prior to the initiation of any legal action against a recipient of Federal financial assistance alleging unlawful employment practices, the Department of Justice and/or EEOC shall, to the extent practical, notify the appropriate agency or agencies of the proposed action and the substance of the allegations.

**§ 42.613 Definitions.**

As used in this regulation, the term:

(a) *Agency* means any Federal department or agency which extends Federal financial assistance subject to any civil rights provision(s) to which this regulation applies.

(b) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, or his or her delegate.

(c) *Chairman of the EEOC* refers to the Chairman of the Equal Employment Opportunity Commission, or his or her delegate.

(d) *EEOC* means the Equal Employment Opportunity Commission and, where appropriate, any of its District Offices.

(e) *Federal financial assistance* includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without

consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

For purposes of this regulation, the term *Federal financial assistance* also includes funds disbursed under the revenue sharing act.

(f) *Joint complaint* means a complaint of employment discrimination covered by title VII or the Equal Pay Act and by title VI, title IX, or the revenue sharing act.

(g) *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, assign, or transferee thereof, but such term does not include any ultimate beneficiary under such program.

(h) *Revenue sharing act* refers to the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. 1221 *et seq.*

(i) *Title VI* refers to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4. Where appropriate, *title VI* also refers to the civil rights provisions of other Federal statutes or regulations to the extent that they prohibit employment discrimination on the ground or race, color, religion, sex or national origin in programs receiving Federal financial assistance of the type subject to title VI itself.

(j) *Title VII* refers to title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

(k) *Title IX* refers to title IX of the Education Amendments of 1972, 20 U.S.C. 1681 to 1683.

### Subpart I—Nondiscrimination on the Basis of Age in Federally Assisted Programs and Activities; Implementation of the Age Discrimination Act of 1975

AUTHORITY: 42 U.S.C. 6103(a)(4); 45 CFR part 90.

SOURCE: Order No. 1843-94, 59 FR 6560, Feb. 11, 1994, unless otherwise noted.

#### GENERAL PROVISIONS

#### § 42.700 Purpose.

(a) This subpart implements the Age Discrimination Act of 1975, as amended (42 U.S.C. 5101-6107) (Act). Subject to certain exceptions, the Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

(b) The Secretary of Health and Human Services has issued a general regulation (45 CFR part 90) to guide other federal agencies regarding implementation of the Act. This subpart is generally based upon that general regulation.

#### § 42.701 Application.

(a) This subpart applies to each program or activity that receives federal financial assistance from the Department of Justice.

(b) This subpart does not apply to employment practices, except to those occurring in programs that receive federal financial assistance under the Job Training Partnership Act.

#### § 42.702 Definitions.

As used in this subpart, the term:

*Act* means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101-6107.

*Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

*Age distinction* means any action using age or an age-related term.

*Age-related term* means a term that necessarily implies a particular age or