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the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 1594-92, 57 FR 27356, June 19, 1992, as amended by Order No. 3141-2010, 75 FR 9103, Mar. 1, 2010]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

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AUTHORITY: 8 U.S.C. 1103(a)(1), (g), 1324b.

SOURCE: 81 FR 91789, Dec. 19, 2016, unless otherwise noted.

§ 44.100 Purpose.

The purpose of this part is to implement section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

For purposes of 8 U.S.C. 1324b and this part:

(a) *Charge* means a written statement in any language that—

(1) Is made under oath or affirmation;

(2) Identifies the charging party's name, address, and telephone number;

(3) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(4) Identifies the name and address of the person or other entity against whom the charge is being made;

(5) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(6) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or involves intimidation or retaliation; or involves unfair documentary practices;

(7) Indicates the citizenship status of the injured party;

(8) Indicates, if known, the number of individuals employed on the date of the alleged unfair immigration-related employment practice by the person or other entity against whom the charge is being made;

(9) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Department of Homeland Security, indicates that the charging party has the authorization of the injured party to file the charge;

(10) Indicates whether a charge based on the same set of facts has been filed

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with the Equal Employment Opportunity Commission, and if so, the specific office and contact person (if known); and

(1) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An injured party who files a charge with the Special Counsel;

(2) An individual or entity authorized by an injured party to file a charge with the Special Counsel that alleges that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Department of Homeland Security who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred or is occurring.

(c) *Citizenship status* means an individual's status as a U.S. citizen or national, or non-U.S. citizen, including the immigration status of a non-U.S. citizen.

(d) *Complaint* means a written submission filed with the Office of the Chief Administrative Hearing Officer (OCAHO) under 28 CFR part 68 by the Special Counsel or by a charging party, other than an officer of the Department of Homeland Security, alleging one or more unfair immigration-related employment practices under 8 U.S.C. 1324b.

(e) *Discriminate* as that term is used in 8 U.S.C. 1324b(a) means the act of intentionally treating an individual differently from other individuals because of national origin or citizenship status, regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(f) The phrase “for purposes of satisfying the requirements of section 1324a(b),” as that phrase is used in 8 U.S.C. 1324b(a)(6), means for the purpose of completing the employment eligibility verification form designated in 8 CFR 274a.2, or for the purpose of making any other efforts to verify an individual's employment eligibility, including the use of “E-Verify” or any other electronic employment eligibility verification program.

(g) An act done “for the purpose or with the intent of discriminating against an individual in violation of [1324(a)(1)],” as that phrase is used in 8 U.S.C. 1324b(a)(6), means an act of intentionally treating an individual differently based on national origin or citizenship status in violation of 8 U.S.C. 1324b(a)(1), regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(h) *Hiring* means all conduct and acts during the entire recruitment, selection, and onboarding process undertaken to make an individual an employee.

(i) *Injured party* means an individual who claims to be adversely affected directly by an unfair immigration-related employment practice.

(j) The phrase “more or different documents than are required under such section,” as that phrase is used in 8 U.S.C. 1324b(a)(6), includes any limitation on an individual's choice of acceptable documentation to present to satisfy the requirements of 8 U.S.C. 1324a(b).

(k) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States;

(2) Is an alien who is lawfully admitted for permanent residence, other than an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization, or, if later, within six months after November 6, 1986; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Department of Homeland Security's processing of the application shall not be counted toward the two-year period;

(3) Is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a) or 8 U.S.C. 1255a(a)(1);

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(4) Is admitted as a refugee under 8 U.S.C. 1157; or

(5) Is granted asylum under 8 U.S.C. 1158.

(l) *Recruitment or referral for a fee* has the meaning given the terms “recruit for a fee” and “refer for a fee,” respectively, in 8 CFR 274a.1, and includes all conduct and acts during the entire recruitment or referral process.

(m) *Respondent* means a person or other entity who is under investigation by the Special Counsel, as identified in the written notice required by § 44.301(a) or § 44.304(a).

(n) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under 8 U.S.C. 1324b, or a duly authorized designee.

§ 44.102 Computation of time.

When a time period specified in this part ends on a day when the Federal Government in Washington, DC is closed (such as on weekends and Federal holidays, or due to a closure for all or part of a business day), the time period shall be extended until the next full day that the Federal Government in Washington, DC is open.

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(1) for a person or other entity to intentionally discriminate or to engage in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual’s national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(k), because of such individual’s citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(5) for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or be-

cause the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Unfair documentary practices.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(6) for—

(i) A person or other entity, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), either—

(A) To request more or different documents than are required under § 1324a(b); or

(B) To refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual; and

(ii) To make such request or refusal for the purpose or with the intent of discriminating against any individual in violation of paragraph (a)(1) of this section, regardless of whether such documentary practice is a condition of employment or causes economic harm to the individual.

(b) *Exceptions.* (1) Paragraph (a)(1) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual’s national origin by a person or other entity if such discrimination is covered by 42 U.S.C. 2000e-2; or

(iii) Discrimination because of citizenship status which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) The Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire an individual, or to recruit or refer for a fee an individual, who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

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§ 44.201 [Reserved]

§ 44.202 Counting employees for jurisdictional purposes.

The Special Counsel will calculate the number of employees referred to in § 44.200(b)(1)(i) by counting all part-time and full-time employees employed on the date that the alleged discrimination occurred. The Special Counsel will use the 20 calendar week requirement contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), for purposes of determining whether the exception of § 44.200(b)(1)(ii) applies, and will refer to the Equal Employment Opportunity Commission charges of national origin discrimination that the Special Counsel determines are covered by 42 U.S.C. 2000e-2.

§ 44.300 Filing a charge.

(a) Who may file: Charges may be filed by:

- (1) Any injured party;
- (2) Any individual or entity authorized by an injured party to file a charge with the Special Counsel alleging that the injured party is adversely affected directly by an unfair immigration-related employment practice; or
- (3) Any officer of the Department of Homeland Security who alleges that an unfair immigration-related employment practice has occurred or is occurring.

(b) Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. A charge is deemed to be filed on the date it is postmarked or the date on which the charging party otherwise delivers or transmits the charge to the Special Counsel.

- (c) Charges may be sent by:
- (1) U.S. mail;
 - (2) Courier service;
 - (3) Electronic or online submission;
- or
- (4) Facsimile.

(d) No charge may be filed respecting an unfair immigration-related employment practice described in § 44.200(a)(1)(i) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964, as amended, unless the charge

is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed as being outside the scope of this part.

§ 44.301 Receipt of charge.

(a) Within 10 days of receipt of a charge, the Special Counsel shall notify the charging party and respondent by certified mail, in accordance with paragraphs (b) and (c) of this section, of the Special Counsel's receipt of the charge.

(b) The notice to the charging party shall specify the date on which the charge was received; state that the charging party, other than an officer of the Department of Homeland Security, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days of receipt of the charge; and state that the charging party will have 90 days from the receipt of the letter of determination issued pursuant to § 44.303(b) by which to file such a complaint.

(c) The notice to the respondent shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

(d)(1) If a charging party's submission is found to be inadequate to constitute a complete charge as defined in § 44.101(a), the Special Counsel shall notify the charging party that the charge is incomplete and specify what additional information is needed.

(2) An incomplete charge that is later deemed to be complete under this paragraph is deemed filed on the date the initial but inadequate submission is postmarked or otherwise delivered or transmitted to the Special Counsel, provided any additional information requested by the Special Counsel pursuant to this paragraph is postmarked or otherwise provided, delivered or transmitted to the Special Counsel within 180 days of the alleged occurrence of an unfair immigration-related employment practice or within 45 days of the date on which the charging

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party received the Special Counsel’s request for additional information, whichever is later.

(3) Once the Special Counsel determines adequate information has been submitted to constitute a complete charge, the Special Counsel shall issue the notices required by paragraphs (b) and (c) of this section within 10 days.

(e) In the Special Counsel’s discretion, the Special Counsel may deem a submission to be a complete charge even though it is inadequate to constitute a charge as defined in §44.101(a). The Special Counsel may then obtain the additional information specified in §44.101(a) in the course of investigating the charge.

(f) A charge or an inadequate submission referred to the Special Counsel by a federal, state, or local government agency appointed as an agent for accepting charges on behalf of the Special Counsel is deemed filed on the date the charge or inadequate submission was postmarked to or otherwise delivered or transmitted to that agency. Upon receipt of the referred charge or inadequate submission, the Special Counsel shall follow the applicable notification procedures for the receipt of a charge or inadequate submission set forth in this section.

(g) The Special Counsel shall dismiss a charge or inadequate submission that is filed more than 180 days after the alleged occurrence of an unfair immigration-related employment practice, unless the Special Counsel determines that the principles of waiver, estoppel, or equitable tolling apply.

§ 44.302 Investigation.

(a) The Special Counsel may seek information, request documents and answers to written interrogatories, inspect premises, and solicit testimony as the Special Counsel believes is necessary to ascertain compliance with this part.

(b) The Special Counsel may require any person or other entity to present Employment Eligibility Verification Forms (“Forms I-9”) for inspection.

(c) The Special Counsel shall have reasonable access to examine the evidence of any person or other entity being investigated. The respondent shall permit access by the Special

Counsel during normal business hours to such books, records, accounts, papers, electronic and digital documents, databases, systems of records, witnesses, premises, and other sources of information the Special Counsel may deem pertinent to ascertain compliance with this part.

(d) A respondent, upon receiving notice by the Special Counsel that it is under investigation, shall preserve all evidence, information, and documents potentially relevant to any alleged unfair immigration-related employment practices, and shall suspend routine or automatic deletion of all such evidence, information, and documents.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether to file a complaint with respect to the charge.

(b) If the Special Counsel determines not to file a complaint with respect to such charge by the end of the 120-day period, or decides to continue the investigation of the charge beyond the 120-day period, the Special Counsel shall, by the end of the 120-day period, issue letters to the charging party and respondent by certified mail notifying both parties of the Special Counsel’s determination.

(c) When a charging party receives a letter of determination issued pursuant to paragraph (b) of this section, the charging party, other than an officer of the Department of Homeland Security, may file a complaint directly before an administrative law judge in the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days after his or her receipt of the Special Counsel’s letter of determination. The charging party’s complaint must be filed with OCAHO as provided in 28 CFR part 68.

(d) The Special Counsel’s failure to file a complaint with respect to such charge with OCAHO within the 120-day period shall not affect the right of the Special Counsel to continue to investigate the charge or later to bring a complaint before OCAHO.

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(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before OCAHO.

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on the Special Counsel's own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or other entity has engaged or is engaging in such practices, and shall notify a respondent by certified mail of the commencement of the investigation.

(b) The Special Counsel may file a complaint with OCAHO when there is reasonable cause to believe that an unfair immigration-related employment practice has occurred no more than 180 days prior to the date on which the Special Counsel opened an investigation of that practice.

§ 44.305 Regional offices.

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out the Special Counsel's duties.

PART 45—EMPLOYEE RESPONSIBILITIES

Sec.

- 45.1 Cross-reference to ethical standards and financial disclosure regulations.
- 45.2 Disqualification arising from personal or political relationship.
- 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).
- 45.4 Personal use of Government property.
- 45.10 Procedures to promote compliance with crime victims' rights obligations.
- 45.11 Reporting to the Office of the Inspector General.
- 45.12 Reporting to the Department of Justice Office of Professional Responsibility.
- 45.13 Duty to cooperate in an official investigation.

AUTHORITY: 5 U.S.C. 301, 7301, App. 3, 6; 18 U.S.C. 207; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive

branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[61 FR 59815, Nov. 25, 1996]

§ 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

(1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

(1) *Political relationship* means a close identification with an elected official, a candidate (whether or not successful)