

Office of Special Counsel

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individual, agency, or other entity to whom the record may be released, which record may be released and, where applicable, during which time frame the record may be released. The subject individual's identity and, where applicable, the identity of the individual to whom the record is to be released shall be verified as set forth in §1830.3(c).

(b) *Releases without the consent of the subject individual.* The releases listed in this paragraph may be made without the consent of the subject individual, including:

(1) To employees and contractors of the Office of Special Counsel who have a need for the record to perform their duties.

(2) As required by the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

(3) To the entities listed in the Privacy Act at 5 U.S.C. 552a(b)(1) through (12).

PART 1840—SUBPOENAS

AUTHORITY: 5 U.S.C. 1212(e).

§ 1840.1 Service of subpoenas by mail.

In addition to all other methods of authorized service, an Office of Special Counsel subpoena may be served by mailing a copy to the person at his or her residence or place of business by certified or registered mail.

[54 FR 47345, Nov. 14, 1989]

PART 1850—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 87 FR 63415, Oct. 19, 2022, unless otherwise noted.

§ 1850.101 Purpose.

The purpose of this part is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended Section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1850.102 Application.

This part applies to all programs or activities conducted by OSC, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 1850.103 Definitions.

Auxiliary aids means services or devices that enable individuals with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by OSC. For example, auxiliary aids useful for individuals with impaired vision include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for individuals with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf individuals (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes

OSC's alleged discriminatory action in sufficient detail to inform OSC of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Days means calendar days, unless otherwise stated.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with a disability means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The following phrases used in this definition are further defined as follows:

Physical or mental impairment includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Also, physical and mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

Major life activities include functions such as—

(1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(2) The operation of a *major bodily function*, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Qualified individual with a disability means—

(1) With respect to any OSC program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of OSC's program or activity without modifications in the program or activity that OSC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individuals with disabilities as that term is defined for purposes of employment in 29 CFR 1614.203, which is made applicable to this part by §1850.130.

Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as having an impairment means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Section 504 means Section 504 of the *Rehabilitation Act of 1973* (Pub. L. No. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the *Rehabilitation Act Amendments of 1974* (Pub. L. No. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. No. 95-602, 92 Stat. 2955); and the *Rehabilitation Act Amendments of 1986* (Pub. L. 99-506, 100 Stat. 1810). As used in this part, Section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ § 1850.104–1850.109 [Reserved]

§ 1850.110 Notice.

OSC shall make available to all interested individuals information regarding the provisions of this part and its applicability to the programs or activities conducted by OSC as necessary to apprise such individuals of the protections assured them by Section 504 and this part.

§ § 1850.111–1850.119 [Reserved]

§ 1850.120 General prohibitions against discrimination against individuals with disabilities.

(a) No qualified individual with a disability shall, on the basis of such disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by OSC.

(b) OSC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with a disability an opportunity to partici-

pate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(6) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(7) OSC may not exclude a qualified individual with a disability from participation in any of OSC's programs or activities, even though permissibly separate or different programs or activities exist.

(c) OSC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(d) OSC may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(1) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by OSC, or;

(2) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

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(e) OSC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(f) OSC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may OSC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by OSC are not, themselves, covered by this part.

(g) This part does not prohibit the exclusion of nondisabled individuals from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities.

(h) OSC shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ § 1850.121–1850.129 [Reserved]

§ 1850.130 Employment of qualified individuals with disabilities.

OSC shall not subject any qualified individual with a disability, on the basis of such disability, to discrimination in employment under any program or activity OSC conducts. The definitions, requirements, and procedures of Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§ § 1850.131–1850.139 [Reserved]

§ 1850.140 Program accessibility: Discrimination against qualified individuals with disabilities prohibited.

Except as otherwise provided in § 1850.150, no qualified individual with disabilities shall, because OSC's facilities are inaccessible to or unusable by individuals with disabilities, be denied

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the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by OSC.

§ § 1850.141–1850.149 [Reserved]

§ 1850.150 Program accessibility: Existing facilities.

(a) *General.* OSC shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require OSC to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require OSC to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require OSC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where OSC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, OSC has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Special Counsel or the Special Counsel's designee after considering all OSC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, OSC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* OSC may comply with the requirements of this section through such means as redesign of equipment, reassignment of services

to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. OSC is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. OSC, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, OSC shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of paragraph (a) of this section in historic preservation programs, OSC shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraphs (a)(2) or (3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning individuals to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

§ 1850.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of OSC shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act

(42 U.S.C. 4151-4157), as established in 41 *CFR* 101-19.600 to 101-19.607, apply to buildings covered by this section.

§ § 1850.152-1850.159 [Reserved]

§ 1850.160 Communications.

(a) OSC shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) OSC shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by OSC.

(i) In determining what type of auxiliary aid is necessary, OSC shall give primary consideration to the requests of the individual with a disability.

(ii) OSC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where OSC communicates with parties by telephone, telecommunication devices for deaf individuals or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing.

(b) OSC shall ensure that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) OSC shall provide signage at a primary entrance to each of its inaccessible facilities, if any, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require OSC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where OSC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, OSC

has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Special Counsel or the Special Counsel's designee after considering all OSC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, OSC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 1850.161–1850.169 [Reserved]

§ 1850.170 Compliance procedures.

(a) OSC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(b) All complaints of discrimination on the basis of disability in programs and activities conducted by OSC shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any individual who believes that they have been subjected to discrimination prohibited by this part, or an authorized representative of such individual, may file a complaint. Any individual who believes that any specific class of individuals has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of an individual or member of a class of individuals claiming to be aggrieved may be made by any individual, agency, or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal Employment Opportunity (EEO Director), U.S. Office of Special

Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 within 35-calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by email is the date the email is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service.

(3) *Acceptance of complaint.* (i) OSC shall accept a complete complaint that is filed in accordance with paragraph (b) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If OSC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

(iii) If the EEO Director receives a complaint that is not complete, the Director shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of the complainant's receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall inform the complainant.

(4) Within 180 days of the receipt of a complete complaint, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) Any appeal of the EEO Director's initial decision must be filed with the Principal Deputy Special Counsel (PDSC), U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 by the complainant

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within 35 days of the date the EEO Director issues the decision required by paragraph (b)(4) of this section. OSC may extend this time for good cause when a complainant shows that circumstances beyond the complainant's control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the date it is received by the PDSC. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked "Appeal of Section 504 Decision" and must contain specific objections explaining why the complainant believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) The PDSC shall notify the complainant of the results of the appeal

within 60 days of the receipt of the request. If the PDSC needs additional information from the complainant, the PDSC shall have 60 days from the date the additional information is received to make a determination on the appeal.

(7) The time limits cited in paragraphs (b)(2) and (5) of this section may be extended for an individual case when the PDSC determines there is good cause, based on the particular circumstances of that case.

(8) OSC may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernmental investigator to perform the investigation, but the authority for making the final determination may not be delegated to another entity.

(c) OSC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with disabilities.

PARTS 1851-1899 [RESERVED]