

Federal Labor Relations Authority

§ 2416.150

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.

[74 FR 51743, Oct. 8, 2009]

§§ 2416.141–2416.148 [Reserved]

§ 2416.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2416.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

[74 FR 51743, Oct. 8, 2009]

§ 2416.150 Program accessibility: Existing facilities.

(a) *General.* The agency 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 the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

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

(3) Require the agency 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 agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2416.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee

after considering all agency 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, the agency 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.* The agency 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. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, 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, the agency 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 § 2416.150(a) in historic preservation programs, the agency 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 § 2416.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an

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historic property that cannot otherwise be made accessible;

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

(iii) Adopting other innovative methods.

[74 FR 51743, Oct. 8, 2009]

§ 2416.151 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 the agency 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.

[74 FR 51744, Oct. 8, 2009]

§§ 2416.152–2416.159 [Reserved]

§ 2416.160 Communications.

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

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

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

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

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

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

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, 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 the agency 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 agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2416.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency 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, the agency 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.

[53 FR 25881, 25885, July 8, 1988, as amended at 74 FR 51744, Oct. 8, 2009]

§§ 2416.161–2416.169 [Reserved]

§ 2416.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency.

(b) The agency 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).

(c) The Director, Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Equal Employment Opportunity, Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424-0001.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency 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 Government entity.

(f) The agency 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 useable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2416.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of

the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(1) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25881, 25885, July 8, 1988, as amended at 53 FR 25881, July 8, 1988; 68 FR 10953, Mar. 7, 2003; 74 FR 51744, Oct. 8, 2009]

§§ 2416.171-2416.999 [Reserved]

PART 2417—TESTIMONY BY EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

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AUTHORITY: 5 U.S.C. 7105; 31 U.S.C. 9701; 44 U.S.C. 3101-3107.

SOURCE: 74 FR 11640, Mar. 19, 2009, unless otherwise noted.

Subpart A—General Provisions

§ 2417.101 Scope and purpose.

(a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:

(1) The production or disclosure of official information or records by employees, members, advisors, and consultants of the Federal Labor Relations Authority's (FLRA's) three-Member Authority component (the Authority), the Office of the General Counsel (the General Counsel), or the Federal Service Impasses Panel (the Panel); and

(2) The testimony of current and former employees, members, advisors, and consultants of the Authority, the General Counsel, or the Panel relating to official information, official duties, or official records, in connection with a legal proceeding on behalf of any party to a cause pending in civil federal or state litigation, including any proceeding before the FLRA or any other board, commission, or administrative agency of the United States.

(b) The FLRA intends these provisions to:

(1) Conserve employees' time for conducting official business;

(2) Minimize employees' involvement in issues unrelated to the FLRA's mission;

(3) Maintain employees' impartiality in disputes between private litigants; and

(4) Protect sensitive, confidential information and the integrity of the FLRA's administrative and deliberative processes.

(c) In providing for these requirements, the FLRA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the FLRA's internal operations. It does not create any right or benefit, sub-

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stantive or procedural, that a party may rely upon in any legal proceeding against the United States.

[74 FR 11640, Mar. 19, 2009, as amended at 81 FR 63362, Sept. 15, 2016]

§ 2417.102 Applicability.

This part applies to requests and demands to current and former employees, members, advisors, and consultants for factual or expert testimony relating to official information or official duties, or for production of official records or information, in civil legal proceedings. This part does not apply to:

(a) Requests for or demands upon an employee to testify as to facts or events that are unrelated to his or her official duties, or that are unrelated to the functions of the Authority, the General Counsel, or the Panel;

(b) Requests for or demands upon a former employee to testify as to matters in which the former employee was not directly or materially involved while at the Authority, the General Counsel, or the Panel;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a;

(d) Congressional requests and demands for testimony, records, or information; or

(e) Requests or demands for testimony, records, or information by any Federal, state, or local agency in furtherance of an ongoing investigation of possible violations of criminal law.

[74 FR 11640, Mar. 19, 2009, as amended at 81 FR 63362, Sept. 15, 2016]

§ 2417.103 Definitions.

The following definitions apply to this part:

Demand means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records, or for the appearance and testimony of an employee in a civil legal proceeding.

Employee means:

(1)(i) Any current or former employee or member of the Authority, the General Counsel, or the Panel;

(ii) Any other individual hired through contractual agreement by or

on behalf of the Authority, the General Counsel, or the Panel, or who has performed or is performing services under such an agreement for the Authority, the General Counsel, or the Panel; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the Authority, the General Counsel, or the Panel, whether formal or informal.

(2) This definition does not include former FLRA employees who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the FLRA.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a civil legal or administrative proceeding. Legal proceeding includes all phases of litigation.

Records or official records and information means all information in the custody and control of the Authority, the General Counsel, or the Panel, relating to information in the custody and control thereof, or acquired by an employee while in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the Authority, the General Counsel, or the Panel.

Request means any request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

Requester means anyone who makes a request or demand under this part upon the FLRA.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

[81 FR 63362, Sept. 15, 2016]

Subpart B—Requests or Demands for Testimony and Production of Documents

§ 2417.201 General prohibition and designation of the appropriate decision-maker.

(a) *General prohibition.* No employee or former employee of the Authority, the General Counsel, or the Panel may produce official records and information or provide any testimony relating to official information in response to a request or demand without the prior, written approval of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate.

(b) *Appropriate decision-maker.* (1) The Chairman of the FLRA, or his or her designee, determines whether to grant approval if the record requested or demanded is maintained by the FLRA's Authority component, or the person who is the subject of the request or demand is subject to the supervision or control of the FLRA's Authority component or was subject to such supervision or control when formerly employed at the FLRA.

(2) The General Counsel, or his or her designee, determines whether to grant approval if the record requested or demanded is maintained by the General Counsel, or the person who is the subject of the request or demand is subject to the supervision or control of the General Counsel or was subject to such supervision or control when formerly employed at the FLRA.

(3) The Chairman of the Panel, or his or her designee, determines whether to grant approval if the record requested or demanded is maintained by the Panel, or the person who is the subject of the request or demand is subject to the supervision or control of the Panel or was subject to such supervision or control when formerly employed at the FLRA.

[81 FR 63362, Sept. 15, 2016]

§ 2417.202 Factors that the decision-maker will consider.

The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, in his or her sole discretion, may grant an employee permission to testify on matters relating

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to official information, or produce official records and information, in response to a request or demand. Among the relevant factors that the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (c) Allowing such testimony or production of records would assist or hinder the FLRA in performing its statutory duties;
- (d) Allowing such testimony or production of records would be in the best interest of the FLRA;
- (e) The records or testimony can be obtained from other sources;
- (f) The request or demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the request or demand arose;
- (g) Disclosure would violate a statute, Executive Order or regulation;
- (h) Disclosure would reveal confidential, sensitive, or privileged information; trade secrets or similar, confidential or financial information; otherwise protected information; or information that would otherwise be inappropriate for release;
- (i) Disclosure would impede or interfere with an ongoing law-enforcement investigation or proceeding, or compromise constitutional rights or national-security interests;
- (j) Disclosure would result in the FLRA appearing to favor one litigant over another;
- (k) The request was served before the demand;
- (l) A substantial Government interest is implicated;
- (m) The request or demand is within the authority of the party making it;
- (n) The request or demand is sufficiently specific to be answered; and
- (o) Any other factor deemed relevant under the circumstances of the particular request or demand.

[74 FR 11640, Mar. 19, 2009, as amended at 81 FR 63363, Sept. 15, 2016]

§ 2417.203 Filing requirements for litigants seeking documents or testimony.

A requester must comply with the following requirements when filing a request or demand for official records and information or testimony under part 2417. Requesters should file a request before a demand.

- (a) The request or demand must be in writing and must be submitted to the FLRA's Office of the Solicitor.
- (b) The written request or demand must contain the following information:
 - (1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;
 - (2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;
 - (3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;
 - (4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and the burden on the FLRA to produce the records or provide testimony;
 - (5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an employee, such as a retained expert;
 - (6) If testimony is sought, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;
 - (7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;
 - (8) The name, address, and telephone number of counsel to each party in the case; and
 - (9) An estimate of the amount of time that the requester and other parties will require for each employee to prepare for testimony, to travel to the legal proceeding, and to attend the legal proceeding.

(c) The Office of the Solicitor reserves the right to require additional information to complete the request, where appropriate.

(d) Requesters should submit their request or demand at least 30 days before the date that records or testimony are required. Requests or demands submitted fewer than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request or demand and the reasons that would justify expedited processing.

(e) Failure to cooperate in good faith to enable the FLRA to make an informed decision may serve as the basis for a determination not to comply with the request or demand.

(f) The request or demand should state that the requester will provide a copy of the employee's statement at the expense of the requester and that the requester will permit the FLRA to have a representative present during the employee's testimony.

[74 FR 11640, Mar. 19, 2009, as amended at 81 FR 63362, Sept. 15, 2016]

§ 2417.204 Where to submit a request or demand.

(a) Requests or demands for official records, information, or testimony under this part must be served on the Office of the Solicitor at the following address: Office of the Solicitor, Federal Labor Relations Authority, 1400 K Street NW, Suite 300, Washington, DC 20424-0001; telephone: (771) 444-5775; fax: (202) 343-1007; or email: *solmail@flra.gov*. The request or demand must be sent by mail, fax, or email and clearly marked "Part 2417 Request for Testimony or Official Records in Legal Proceedings."

(b) A person requesting public FLRA information and non-public FLRA information under this part may submit a combined request for both to the Office of the Solicitor. If a requester decides to submit a combined request under this section, the FLRA will process the combined request under this part and not under part 2411 (the FLRA's Freedom of Information Act regulations).

[81 FR 63363, Sept. 15, 2016, as amended at 89 FR 11701, Feb. 15, 2024]

§ 2417.205 Consideration of requests or demands.

(a) After receiving service of a request or a demand for official records, information, or testimony, the appropriate decision-maker will review the request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the appropriate decision-maker will issue a determination within 30 days from the date that it receives the request.

(c) The appropriate decision-maker may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the FLRA or the United States or for other good cause.

(d) The FLRA may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the Office of the Solicitor at least 30 days before the date that they will be needed.

[81 FR 63363, Sept. 15, 2016]

§ 2417.206 Final determination.

The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, makes the final determination on demands or requests to employees thereof for production of official records and information or testimony in civil litigation under this part. All final determinations are within the sole discretion of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate. The appropriate decision-maker will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that may be imposed on the release of records or information, or on the testimony of an employee. This final determination exhausts administrative remedies for discovery of the information.

[81 FR 63363, Sept. 15, 2016]