



Description of graphic: RI State Seal an anchor in gold behind a blue wheelchair logo. Just below is a blue banner with the state motto "Hope". All are in the center of a ring of 8 blue stars, in groups of 2 separated by the logos for Braille, hearing aids, low vision and amplified phone.

Governor's Commission on Disabilities Executive Committee Meeting

Monday December 12, 2011 4:50 - 5:30 PM

John O. Pastore Center, 41 Cherry Dale Court,
Cranston, RI 02920-3049

(voice) 401-462-0100 (fax) 462-0106 (tty) via RI Relay 711

(e-mail) disabilities@gcd.ri.gov

(website) www.disabilities.ri.gov

	<p>Attendees: R. Timothy Flynn (Chair.); Rosemary Carmody (EAC, C); William Inlow (LC, VC); Ronald McMinn (AC, VC); Theresa Thaelke (DBEC,C); & Linda Ward (LC, C)</p> <p>Absentees: Dr. Kate McCarthy-Barnett (Vice Chair.); Andrew Argenbright (DBEC, VC); Dr. Judith Drew (HB, C); Sarah Everhart Skeels (EC, VC); Casey Gartland (EAC, VC); & Patricia Ryherd (EC, C)</p>		
<p>Guests:</p>	<p>Anthony Robinson (House Policy Office)</p>		
<p>Staff:</p>	<p>Bob Cooper, Secretary</p>		
	Agenda Topics	Moderator/Leader	Time
<p>Clock graphic</p>	<p>Call to Order and Acceptance of the Minutes</p>	<p>R. Timothy Flynn, Chairperson</p>	<p>4:50</p>
<p>Chair calls the meeting to order at 4:51 PM Introductions of members and guests</p>			
<p>Action Items:</p>			
<p>Balancing Budget graphic</p>	<p>Commission Budget</p>	<p>Tim Flynn & Bob Cooper, Executive Secretary</p>	<p>4:55</p>
<p>Purpose/Goal: To Respond to the Governor's Chief of Staff December 9, 2011 FY 2013 Budget - Program Review Memorandum (below)</p>			

Office of the Governor
State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Lincoln D. Chafee
Governor

MEMORANDUM

To: Department Director and Agency Heads
From: Jamia McDonald, Deputy Chief of Staff
Date: December 9, 2011
Re: FY 2013 Budget - Program Review

As many of you are aware, the state is anticipating a significant budget shortfall for FY 2013. Although pension reform has yielded a significant savings and the performance management process has been ongoing, the Governor's budget recommendation will still require as much as \$150 million in program reductions and efficiencies in order to be in balance for FY 2013.

The Governor remains committed to introducing the budget on January 19, 2012, as required by statute. This deadline is approximately six weeks from now. Across-the-board reductions have been applied for numerous budget cycles and are no longer an option. Therefore the Governor's Office is undertaking a systematic review of each and every program in state government to determine if the program is 1) legally required and 2) aligned with the core mission of the agency. The purpose of this review is to refocus the priorities of state government in an environment of continually shrinking resources. This review will include all programs, not just those programs financed with general revenues.

Program Review

As a first step in the process, approximately thirty people across state government were asked to review the Performance Management questionnaires that each agency was required to enter into Survey Monkey. The reviewers were asked to determine if the program is mandated by State or Federal laws, or not mandated, by verifying the statutory references provided in the questionnaires.

Attached is a spreadsheet summarizing this review, which includes a list of programs, the FTE count, and the budget information that your agency provided, categorized as mandated versus non-mandated programs. All non-mandated programs will be reviewed to determine if the program should be suspended, eliminated, reduced, or remain status quo. Please review the list to ensure that all programs are accounted for, including centralized functions such as finance or legal. In the event that programs have been excluded, you must add them to the spreadsheet and fill in the required statutory, budget, and FTE data. All FTEs in your agency should be included; FTE's not identified in this process will be subject to elimination from the FTE cap. We will also assume that if a program is not accounted for in the spreadsheet that it is not a necessary program and the budget and FTE counts will be reduced accordingly. If you have programs that were excluded in the initial data gathering phase, then you will need to add them to the spreadsheet with a specific statutory reference if they are mandated. If they are not mandated, then please note that on the spreadsheet in the appropriate column.

Program Prioritization

Concurrently, you will need to prioritize both mandated and non-mandated programs based on how critical the program is in meeting the agency's mission. Please note that this is separate from the performance metrics exercise. We are attempting to ensure that the programs we focus our resources on are adhering to the core mission and purpose of each agency. Once that has been determined, then we will focus on making those programs more effective through the use of performance metrics.

You must complete both the program review and the program prioritization no later than 9:00 A.M. on Wednesday, December 14th. A Budget and Program Committee will review all responses and you may be required to meet with the Committee in the next two weeks. Please rank each program as high, medium, or low priority based on relevance to your agency's mission and purpose. Take into consideration that in the current economic climate that it is impossible to finance all programs, so it is impossible to rank all as high or medium priority. You will be required to justify the priority ranking of each program. For agencies that have not yet met with the Budget Officer on the FY 2013 recommendations, this review will take the place of that meeting. For those agencies that have already had their meeting with the Budget Officer, we may be contacting you to schedule a second meeting. At the Budget and Program meeting, we will review your program prioritizations and discuss how best to achieve savings in your department or agency. We ask that you come prepared with a prioritized list of proposed expenditure reductions, which may be achieved through process improvements or program modification, reduction or elimination. These recommendations should be realistic within the current legislative and regulatory landscape (e.g., do not propose a program change that is unlikely to garner any necessary Federal approval) and should reflect reasonable assumptions about implementation timeline (e.g., do not book a year's worth of savings for something that takes six months to implement).

Revenue Options

The Budget and Program Committee will be contemplating revenue options as well, though we do not expect broad tax changes in this budget cycle. If you have revenue items specific to your agency, please send those to Christy Healey at chealey@budget.ri.gov. Additionally, some agencies have identified positions that if filled, have the potential to generate additional revenue to the state. The Budget Office has been working to compile a list of these

revenue generating positions. In the event that you have not previously provided this information, please email it to Christy Healey as soon as possible.

Reorganizations and Consolidations

The Committee is also reviewing any options for potential program reorganizations or consolidations, both for short-term expenditure reductions and long-term efficiency. Please email any suggestions to Brian Daniels in the Governor's Office at Brian.Daniels@governor.ri.gov.

A conference call will be scheduled for the afternoon of Tuesday, December 6th to provide further explanation and answer any questions that you may have. You will receive dial-in instructions for the conference call in a separate email.

Thank you for your immediate attention to this matter and I appreciate your cooperation.

The Performance Management Review Spreadsheet¹										
	Statutory Authority		Budget Data					FTE	Statutory Review Comments	Data Entry Comments
Program Name	Mandated (Add Reference)	Not Mandated	General Revenue	Federal	Restricted	Other	Total	# FTE assigned		
Administrative Support		x	70,859				70,859	0.50	exec secretary is mandated, functions described in PM document are not	
Disability Business Enterprises	RIGL 37-2.2-3, 37-2.2-3.1, 37-2.2-4		13,204				13,204	0.17		
Prompting Employment and Protecting the Employment Rights of Individuals with Disabilities	RIGL 28-5.1-9		64,464	2,898			67,362	0.83		
Protecting the Voting Rights of Individuals with Disabilities	RIGL 17-19-3.2, 17-9.1-31 and 42-87-5(b)			176,044			176,044	0.17		
Protecting the Rights of Individuals with Disabilities	42-51-6(3)		139,426	12,247		298,474	450,147	1.68		Budget - Other incl. Gen'l Ob Bonds \$35K
Advocacy on Behalf of People with Disabilities and their Families	42-51-6(2)		80,103		9,108		89,211	0.58	Broad interpretation of RIGL 42-51-6 and 42-66.3-8	

Discussion: In adopting the Commission's Fiscal Years 2012 - 2013: Budget Requests and Performance Management Initiative / Operational Plans at the September 12th Annual Meeting, the Commission:

- A. Established the program priorities:
 - #1. Advocacy on Behalf of People with Disabilities and their Families
 - #2. Protecting the Rights of Individuals with Disabilities
 - #3. Protecting the Voting Rights of Individuals with Disabilities
 - #4. Prompting Employment and Protecting the Employment Rights of Individuals with Disabilities
 - #5. Disability Business Enterprises

¹ PMIQ review used the FY 11 data (most of the time), even though the Commission's responses included FY 12 & 13 data.

#6. Administrative Support.

B. Approved the text of the Performance Management Initiative Questionnaire and

C. Adopted its FY 2012 & 2013 Budget Requests.

The on-line PMI Questionnaire did not allow for the entire text of the Commission's responses. The Performance Management Initiative Questionnaires (PMIQ), as completed on-line are attached (in reverse order of completion).

The Executive Committee can not alter the program priority rankings as adopted on September 12th. Because the Commission on November 28th submitted a revised budget request, the Executive Committee can and should adjust the FTE and \$ in the PMIQ to reflect the revised request as well as include some or all of the text that did not "fit" into the on-line questionnaire.

The adopted text that did not "fit" in the on-line questionnaire

#1. Advocacy on Behalf of People with Disabilities and their Families

9) Are you currently collecting performance/outcome measurements for the program?

Yes. The Commission tracks the following:

- o The # of bills the Legislation Committee review
- o # of all bills the Commission/Legislation Committee took a position on
- o # of all bills the Commission/Legislation Committee was successful
- o % of Total bills successfully disposed

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

12) Do other governmental or non-governmental organizations or persons assist with program development implementation or outcome assessment (e.g., technical guidance provided by the federal government, client information received from non-profits, etc.). Please list them and their roles.

Yes, during the last week in July (around the anniversary of the signing of the Americans with Disabilities Act - July 26th) the Commission and over 20 community organizations, government and non-governmental agencies conduct a series of public forums on the concerns of people with disabilities and their families to listen to the community and develop plans to address those concerns during the next several years.

The 2011 public forum sponsors were:

- | | |
|---|---|
| <ul style="list-style-type: none">o Alliance for Better Long Term Careo Brain Injury Association of RIo Community Provider Network of RIo Corliss Instituteo CranstonArco East Bay Center, John P. Digits, Jr. Facilityo Fellowship Health Resourceso Frank Oleans Centero In-Sighto J. Arthur Trudeau Memorial Centero Looking Upwards, Inc.o Meeting Street Schoolo National Federation of the Blind of RIo National Multiple Sclerosis Society, RI Chaptero Neighborhood Health Plan of RIo Newport County Community Mental Health Center, Inc.o Ocean State Center for Independent Livingo Office of Rehabilitation Services/ RI Council on Assistive Technologyo Opportunities Unlimited for People with Differing Abilities | <ul style="list-style-type: none">o PALo Parents Support Network of RIo PARI Independent Living Centero Paul V. Sherlock Center on Disabilities @ RICo Perspectives Corporationo Rhodes to Independence @ URI - College of Pharmacyo RI Commission on the Deaf and Hard of Hearingo RI Department of Health - Office of Special Health Care Needso RI Developmental Disabilities Council @ URIo RI Disability Law Centero RI Disability Vote Projecto RI Housingo RI Parent Information Networko RI Public Transit Authorityo RI Rehabilitation Associationo Training Thru Placemento United Healthcare |
|---|---|

13) How many FTEs are assigned to the program? (If an employee spends part of his/her time on a program, please use decimals in the total FTE count.)

Advocacy	FY 11	FY 12	FY 13
General Revenue	0.58	0.55	0.55

19) Does the process or function produce the result(s) originally intended? If not, why not, or what would have to be done to make it produce those results?

Yes.

FY 2011 Achievements

Outcome of Commission's Legislation enacted 3 of 11:

Expansion of the Sherlock (employee buy-in health care) Plan (H 5618 and S 0301)

Updating RI's Access Building Code to match the 2012 US Access Guidelines (H 5284 and S 0206)
Repealing the annual reporting provisions of § 31-28-7.3 Disability parking enforcement program (S 0207 and H-5300)

Outcome of legislative advocacy:

- o Reviewed 322 Acts and Budget Articles
- o Took Positions on 106 Acts and Budget Articles
- o Position Sustained on 61 Acts and Budget Articles, 58%
- o Position Rejected on 45 Acts and Budget Articles, -42%

FY 2011 Barriers Blocking Achievements

Legislature's priorities; state & federal budgetary issues, staffing

FY 2012/13 Goals

Monitor and ensure implementation of this year's enacted Sherlock Buy-In by the statute's deadlines

To enact the 2011 Commission's legislation that was not enacted in 2011

To enact legislation coming from the 2011 Public Forums.

#2. Protecting the Rights of Individuals with Disabilities

9) Are you currently collecting performance/outcome measurements for the program?

Yes, within available budgetary & personnel resources

The Federal program year 2010 contract for this grant has the following requirements:

- o To participate in trainings on the new Title I [employment], II [state & local government services] and III [public accommodations and commercial facilities] regulations;
- o To train and explain changes in the ADA to the public;
- o To provide technical assistance;
- o To conduct public awareness activities;
- o To disseminate materials; and
- o To meet our maintenance of effort, the grant requires that the state pay for 1,643 hours of staff work providing technical assistance on accessibility and 1,155 hours of staff work providing technical assistance on employment.

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

12) Do other governmental or non-governmental organizations or persons assist with program development implementation or outcome assessment (e.g., technical guidance provided by the federal government, client information received from non-profits, etc.). Please list them and their roles.

- o American Institute of Architects, RI
- o NE ADA Center
- o RI College
- o RI Community College
- o RI Department of Administration
- o RI Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals
- o RI Department of Children, Youth, and Families
- o RI Department of Corrections
- o RI Department of Environmental Management
- o RI Department of Human Services
- o RI Realtors Association
- o University of RI

Also see listing in subprogram Advocacy on Behalf of People with Disabilities and their Families Public Forums on the Concerns of Persons with Disabilities and their Families participants and sponsors

The Commission reviews and approves all state and federally funded design plans for compliance with the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, and RIGL 42-87 Civil Rights of Persons with Disabilities, for the:

- RI Department of Transportation: all non-interstate highway projects;
- o RI Department of Education: all school construction and renovation projects;
- o RI Department of Environmental Management: all DEM projects;
- o RI Housing Resource Commission: all affordable housing projects;
- o State Board of Elections/Local Boards of Canvassers: all polling place locations;
- o US Department of Agriculture - Rural Development: all USDA funded projects; and
- o US Department of Housing and Urban Development: all HUD funded affordable housing projects.

15) Are any FTEs or contractors federally funded, either partly or fully?

Yes, 0.17

#3. Protecting the Voting Rights of Individuals with Disabilities

5) Is the program's duration limited to a specific time period (e.g., authorization sunset, expiration of federal grant, etc.)

No, the State voting rights law must continued to be enforced by the Commission.

The federal HAVA-EAID Funds must be expended within 5 federal fiscal years of award. No HAVA-EAID funding is anticipated after federal fiscal year 2011. Already awarded funding is projected to be fully expended by FFY 2016.

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

#4. Prompting Employment and Protecting the Employment Rights of Individuals with Disabilities

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

12) Do other governmental or non-governmental organizations or persons assist with program development implementation or outcome assessment (e.g., technical guidance provided by the federal government, client information received from non-profits, etc.). Please list them and their roles.

o NE ADA Center provides grant and specific tracking information requirements for training

o Governor's Commission on Disabilities Employment Committee member (from RI Department of Labor and Training, RI Department of Corrections, RI Economic Development Corporation, RI Department of Human Services' Office of Rehabilitation Services, college and university personnel, private industry, and private citizens) provide input into the:

o Title I activities of the GCD staff person;

o RI college and university career services and disability services staffs' semi-annual Increasing Employment Outcomes meetings

o Realtors, chambers of commerce, employers, etc. provide input on programs developed RI college and university career services and disability service staffs provide post data to the semi-annual "Increasing Employment Outcomes" meetings on standardized feedback sheets to determine the degree of learning that occurred and gather input for future meeting topics

o RI college and university faculty requesting the ADA and You at Work training provide input on their class membership and goals in order to tailor the training

o RI college and university students participating in the ADA and You at Work training sessions provide pre and post data on standardized feedback forms to determine the degree of learning that occurred

o RI state agencies e.g. Department of Corrections, Department of Administration and the Judiciary provide input on the training needs and subsequent materials

o RI Department of Human Services' Office of Rehab Services and RI College's Paul V. Sherlock Center on Disabilities' staff provide input into the content of the Supporting Meaningful Employment training

o Supporting Meaningful Employment training participants provide pre and post data on standardized feedback forms to determine the degree of learning that occurred

#5. Disability Business Enterprises

9) Are you currently collecting performance/outcome measurements for the program?

Yes, quarterly

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

#6. Administrative Support

10) Do you have a corrective action plan for program underperformance?

Yes, within available budgetary & personnel resources

Potential Revised FY 2013 Performance Management Review Spreadsheet										
Program Name	Statutory Authority		Budget Data					FTE	Statutory Review Comments	Data Entry Comments
	Mandated (Add Reference)	Not Mandated	General Revenue	Federal	Restricted	Other	Total	# FTE assigned		
1. Advocacy on Behalf of People with Disabilities and their Families	42-51-6(1) & (2)		\$134,199		\$9,694		\$143,893	1.18	Broad interpretation of RIGL 42-51-6 ² and 42-66.3-8 ³	

²§ 42-51-6 Duties. - It shall be the duty of the commission to work in cooperation with the National Council on Disability and other interested federal, state, and local agencies, organizations, and employers in:

(1) Promoting on behalf of the people with disabilities and assuring, on behalf of the state, that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state;

(2) Arousing community interest in the concerns of people with disabilities through the utilization of whatever community and state resources the commission may deem necessary to accomplish the maximum in independent living and human development;

(3) Coordinating compliance with federal and state laws protecting the rights of individuals with disabilities by state agencies;

Potential Revised FY 2013 Performance Management Review Spreadsheet

Program Name	Statutory Authority		Budget Data					FTE	Statutory Review Comments	Data Entry Comments
	Mandated (Add Reference)	Not Mandated	General Revenue	Federal	Restricted	Other	Total	# FTE assigned		
2. Protecting the Rights of Individuals with Disabilities	42-51-6(3), 42-51-6.1, 42-51-6.2, 42-51-10, 42-87-5(b) ⁴ , and 30-15-6 ⁵ , 42-46-		\$113,150	\$12,623		\$250,000	\$375,773	1.44		

(4) Providing technical assistance to public and private agencies, businesses, and citizens in complying with federal and state laws protecting the rights of individuals with disabilities; and

(5) From time to time, but not less than once a year, to report to the legislature and the governor, describing the investigations, proceedings, and hearings the commission has conducted and their outcome, the decisions it has rendered, and the other work performed by it, and make recommendations for further legislation concerning abuses and discrimination based on disability that may be desirable.

§ 42-51-6.1 Hearing boards. - (a) The commission's chairperson shall appoint five (5) commissioners as the hearing board for the purpose of conducting hearings and rendering decisions on matters relating to the provisions of chapter 87 of this title and §§ 37-8-15.1 and 42-46-13 within the jurisdiction of the commission.

(b) Three (3) commissioners shall constitute a quorum of a hearing board.

(c) The hearing board is empowered to:

(1) Receive, investigate, and act upon charges of unlawful practices within its jurisdiction; and

(2) In connection with any investigation or hearing held on any matter within its jurisdiction to hold hearings, administer oaths, take the testimony of any person under oath, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the hearing board.

42-51-6.2 Committees and mediation teams. - (a) The commission is authorized to create advisory committees and mediation teams to perform tasks within the jurisdiction of the commission.

(b) The commission may itself, or it may empower these committees and mediation teams to:

(1) Study the concerns of people with disabilities in reaching the maximum in independent living and human development and exercising all of the rights and responsibilities accorded to citizens of this state;

(2) Arouse community interest in the concerns of people with disabilities;

(3) Foster through community effort or otherwise good will among the groups and elements of the population of the state towards people with disabilities; and

(4) Attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.

(c) The committees and teams may make recommendations to the commission for the development of policies and procedures in general.

(d) Advisory committees and mediation teams created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses.

(e) Three (3) members of a committee constitutes a quorum for the purpose of conducting the business of that committee.

§ 42-51-9 Definitions. - The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Disability" means a disability as defined in § 42-87-1.

(2) "Federal and state laws protecting the rights of individuals with disabilities" means, but is not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; Title V of the Rehabilitation Act of 1973, 29 U.S.C. § 794; R.I. Const., art. I, § 2; the provisions of chapter 87 of title 42 and §§ 23-6.3-11, 37-8-15, 37-8-15.1 and 42-46-13.

(3) "State agency" means any department, division, agency, commission, board, office, bureau, council, or authority, either branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

(4) "Coordinating compliance" means the authority to:

(i) Issue guidelines, directives, or instructions that are necessary to effectuate compliance with federal and state laws protecting the rights of individuals with disabilities;

(ii) Establish a grievance procedure to promptly and equitably resolve complaints of noncompliance with federal and state laws protecting the rights of individuals with disabilities involving state agencies, including the power to investigate possible discrimination and eliminate unlawful practices by informal methods of conference, conciliation, and persuasion;

(iii) Initiate complaints against any state agency that willfully fails to comply with federal and state laws protecting the rights of individuals with disabilities to the appropriate state or federal agency; and

(iv) Develop, make periodic revisions to, and oversee the implementation of a transition plan for the removal of environmental and communication barriers in state-owned facilities.

(5) "Providing technical assistance to public and private agencies, businesses, and citizens on complying with federal and state laws protecting the rights of individuals with disabilities" means information dissemination and training designed to encourage the voluntary compliance with laws protecting the rights of individuals with disabilities; conducting disability accessibility surveys and providing advice on how to overcome any barriers to accessibility; and a mediation service to assist parties who voluntarily chose to utilize that service to resolve allegations of discrimination on the basis of disability.

(6) "Promoting on behalf of the people with disabilities and assuring, on behalf of the state, that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state" means the authority to act and appear on behalf of the people with disabilities to present evidence and make arguments before any federal, state or local agency or public body regarding matters pending before that agency or public body that may have an adverse effect on persons with disabilities.

³ **§ 42-66.3-8 Home and community care advisory committee.** - (a) There is established a permanent state committee to be known as the home and community care services advisory committee established for the purpose of advising the director of elderly affairs relative to the needs and concerns of home and community care services care recipients.

⁴RIGL 42-87-5(b) Civil Rights of People with Disabilities - Enforcement of anti-discrimination provisions

⁵RIGL 30-15-6 Emergency Management - Advisory Council

Potential Revised FY 2013 Performance Management Review Spreadsheet

Program Name	Statutory Authority		Budget Data					FTE	Statutory Review Comments	Data Entry Comments
	Mandated (Add Reference)	Not Mandated	General Revenue	Federal	Restricted	Other	Total	# FTE assigned		
	13 ⁶ , 29 USC 794 ⁷ and 42 USC 12101 et. seq. ⁸									
3. Protecting the Voting Rights of Individuals with Disabilities	RIGL 17-19-3.2 ⁹ , 17-9.1-31 ¹⁰ and 42-87-5(b), and 42 USC 15461 Section 261 ¹¹		\$6,662	\$102,799			\$109,461	0.52		
4. Prompting Employment and Protecting the Employment Rights of Individuals with Disabilities	RIGL 42-51-6, 42-51-6.2 28-5.1-9 ¹² and 29 USC 794 & 42 USC 12101 et. seq.		\$76,938	\$8,230			\$85,168	0.93		
5. Disability Business Enterprises	RIGL 37-2.2-3 ¹³ , 37-2.2-3.1, 37-2.2-4		\$16,916				\$16,916	0.18		
6. Administrative Support	RIGL 35-3-24 ¹⁴ , 38-1-9 ¹⁵ , 35-14-3 ¹⁶ , 42-35-2.1 ¹⁷		\$74,649				\$74,649	0.75	exec secretary is mandated ¹⁸ , functions described in PM document are not	
Total			\$422,514	\$123,653	\$9,694	\$250,000	\$805,861	5.00		

⁶ RIGL 42-46-13 Open Meetings Act - Accessibility for persons with disabilities

⁷ 29 USC 794 Section 504 of the Rehabilitation Act of 1973 as Amended

⁸ 42 USC 12101 et. seq. Americans with Disabilities Act

⁹ RIGL 17-19-3.2. Polling place accessibility for voters who are disabled or elderly

¹⁰ RIGL 17-9.1-31. Registration of voters - Voter registration advisory board

¹¹ 42 USC 15461 Section 261 of the Help America Vote Act - State Grant for Election Assistance for Individuals with Disabilities

¹² RIGL 28-5.1-9. Equal Opportunity and Affirmative Action - State employment services

¹³ RIGL 37-2.2 Disability Business Enterprises

¹⁴ RIGL 35-3-24 State Budget - Control of state spending

¹⁵ RIGL 38-1-9 Public Records - Custodian designated

¹⁶ RIGL 35-14-3 Financial Integrity and Accountability Act of 1986 - Agency responsibilities

¹⁷ RIGL 42-35-2.1 Administrative Procedures - Rules coordinator

¹⁸ **§ 42-51-3 Governor's Commission on Disabilities - Officers.** - The governor shall designate one member of the commission to serve as its chairperson during the governor's term of office or until he or she appoints another member of the commission to serve in that capacity. The commission shall elect from its own membership a vice-chairperson, who shall serve until his or her successor is elected, and who is authorized to act as chairperson pro tempore of the commission should there be a vacancy for any cause in the office of the chairperson. The commission shall elect from its own membership other officers it deems necessary. The commission shall appoint an executive secretary to serve as executive officer and secretary of the commission, who shall be a full time employee. The commission may appoint additional personnel as may be necessary for the efficient performance of the duties prescribed by this chapter.



voting check off graphic

MOTION: To submit the Commission’s program review and the program prioritization as follows:

- The Revised FY 2013 Performance Management Review Spreadsheet with explanatory footnotes, as revised to include the text of those laws, volunteers’ commitment, and strategic intervention to problems before they become a law suit.
 - The Program Prioritization:
 1. Advocacy on Behalf of People with Disabilities and their Families;
 2. Protecting the Rights of Individuals with Disabilities;
 3. Protecting the Voting Rights of Individuals with Disabilities;
 4. Prompting Employment and Protecting the Employment Rights of Individuals with Disabilities;
 5. Disability Business Enterprises; and
 6. Administrative Support.
- LW/RC passed unanimously

Plan To Boost Employment For Disabled Workers	Tim Flynn	5:15
Purpose/Goal:		
Discussion:		
Salon.Com Thursday, Dec 8, 2011 10:25 AM Eastern Standard Time		
Plan To Boost Employment For Disabled Workers		
By Sam Hananel, Associated Press		
Topics:		
WASHINGTON (AP) – The Obama administration wants to use the power of government purchasing to help increase the number of disabled people in the workforce, proposing to require federal contractors to set a goal of having disabled workers make up at least 7 percent of their employees.		
Labor officials called the plan one of the most significant efforts to protect the rights of disabled workers since passage of the Americans with Disabilities Act in 1990.		
“This is really a historic moment in the civil rights movement in America,” Patricia Shiu, director of the Labor Department’s Office of Federal Contract Compliance Programs, said in an interview.		
Federal contractors and subcontractors account for nearly a quarter of the nation’s workforce. The proposal could have a ripple effect across the country and help bring down the 13 percent unemployment rate for disabled workers, which is about 1 1/2 times the rate of those without disabilities.		
There are about 200,000 federal contractors taking in approximately \$700 billion annually in contracts.		
The government long has used the leverage of federal spending to promote affirmative action in the hiring of women and minorities. The new rule would, for the first time, give that same treatment to people with disabilities.		
The proposed rule is not a quota. It would require companies to devote more resources to recruiting efforts to hire more disabled workers, improve training programs and update data collection.		
Contractors would have to keep detailed records showing they are complying. The rule would require them to list job openings to increase their pool of qualified applicants.		
“For nearly 40 years, the rules have said that contractors simply need to make a ‘good faith’ effort to recruit and hire people with disabilities,” Shiu said. “Clearly, that’s not working.”		
The Labor Department will take comments on the rule for 60 days before considering final approval next year.		
Disability advocates praised the rule.		
“It has been proven again and again that investing in opportunities for people with disabilities are repaid tenfold,” said Lara Schwartz, spokeswoman for the American Association of People with Disabilities. “When more people have the opportunity to earn a living, pay taxes, live independently, the entire nation benefits.”		
Businesses have had mixed reactions to the plan, which could prove easier for larger companies to put in		

place than smaller ones that face increased costs and paperwork.

“The agency issued a number of regulations that have dramatically expanded paperwork and record-keeping requirements with real costs to contractors,” said Michael Eastman, executive director for labor law policy at the U.S. Chamber of Commerce.

That organization has yet taken a formal position on the proposed disability hiring rules. Eastman said his group supports the goals of trying to bring more people with disabilities into the workforce, “but we have concerns whether the agency has proposed the right approach or not.”

Republican lawmakers have complained frequently about the costs that new regulations impose on businesses. On Wednesday, the House passed a measure that would require congressional review of rules that have an effect on the economy of \$100 million or more or adverse effects on employment and productivity.

Some businesses are nervous about asking job applicants to identify themselves as disabled, fearing they may run afoul of the ADA ban on discrimination, Eastman said.

The government has struggled over the years to increase job opportunities for disabled workers. Among working age people with disabilities, 79 percent are outside the labor force altogether, compared with 30.5 percent for those without disabilities, according to the Bureau of Labor Statistics.

The rule would apply to those contractors with at least 50 employees that have a minimum \$50,000 in government contracts. That currently includes about 170,000 contractors.

By contrast, the ADA applies to employers with 15 or more workers. That law prohibits discrimination against the disabled, but does not require businesses to set a specific goal for hiring disabled workers.

Labor officials would monitor compliance with the new rules through annual audits, which are currently performed on about 4,000 contractors each year.

Companies failing to comply could be ordered to make back-payments to those denied employment or change training policies and procedures. In rare cases, the agency could seek a court order to bar a company from bidding for federal contracts.

“I think providing these sorts of measurable clear steps will give contractors the guidance and the clarity they need,” Shiu said.

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[Proposed Rules]

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Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-741

Affirmative Action and Non-discrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Proposed Rule

Federal Register / Vol. 76 , No. 237 / Friday, December 9, 2011 / Proposed Rules

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-741

RIN 1250-AA02

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is proposing to revise the regulations implementing the non-discrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. Section 503 prohibits discrimination by covered Federal contractors and subcontractors against individuals on the basis of disability, and requires affirmative action on behalf of qualified individuals with disabilities. The proposed regulations would strengthen the affirmative action provisions, detailing specific actions a contractor must take to satisfy its obligations. They would also increase the contractor's data collection obligations, and establish a utilization goal for individuals with disabilities to assist in measuring the effectiveness of the contractor's affirmative action efforts. Revision of the non-discrimination provisions to implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008 is also proposed.

DATES: To be assured of consideration, comments must be received on or before February 7, 2012.

ADDRESSES: You may submit comments, identified by RIN number 1250-AA02, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Fax: (202) 693-1304 (for comments of six pages or less).

Mail: Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue NW, Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693-0103 (voice) or (202) 693-1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C-3325, 200 Constitution Avenue NW., Washington, DC 20210, or via the Internet at <http://www.regulations.gov>. Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking (NPRM) will be made available in the following formats: Large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C-3325, Washington, DC 20210. Telephone: (202) 693-0103 (voice) or (202) 693-1337 (TTY).

OFCCP proposes to revise 41 CFR part 60-741 to read as follows:

PART 60-741--AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

Subpart A--Preliminary Matters, Equal Opportunity Clause
Sec.

60-741.1 Purpose, applicability and construction.

60-741.2 Definitions.

60-741.3 Exceptions to the definitions of "disability" and "qualified individual."

60-741.4 Coverage and waivers.

60-741.5 Equal opportunity clause.

Subpart B--Discrimination Prohibited

60-741.20 Covered employment activities.

60-741.21 Prohibitions.

60-741.22 Direct threat defense.

60-741.23 Medical examinations and inquiries.

60-741.24 Drugs and alcohol.

60-741.25 Health insurance, life insurance and other benefit plans.

Subpart C--Affirmative Action Program

60-741.40 General purpose and applicability of the affirmative action program requirement.

60-741.41 Availability of affirmative action program.
60-741.42 Invitation to self-identify.
60-741.43 Affirmative action policy.
60-741.44 Required contents of affirmative action programs.
60-741.45 Reasonable Accommodation Procedures.
60-741.46 Utilization goals.
60-741.47 Providing priority consideration in employment.
60-741.48 Sheltered workshops.
Subpart D--General Enforcement and Complaint Procedures
60-741.60 Compliance evaluations.
60-741.61 Complaint procedures.
60-741.62 Conciliation agreements.
60-741.63 Violations of conciliation agreements.
60-741.64 Show cause notices.
60-741.65 Enforcement proceedings.
60-741.66 Sanctions and penalties.
60-741.67 Notification of agencies.
60-741.68 Reinstatement of ineligible contractors.
60-741.69 Intimidation and interference.
60-741.70 Disputed matters related to compliance with the act.
Subpart E--Ancillary Matters
60-741.80 Recordkeeping.
60-741.81 Access to records.
60-741.82 Labor organizations and recruiting and training agencies.
60-741.83 Rulings and interpretations.

Appendix A to Part 60-741--Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971-1975 Comp., p. 841).

Subpart A--Preliminary Matters, Equal Opportunity Clause

Sec. 60-741.1 Purpose, applicability, and construction.

(a) Purpose. The purpose of this part is to set forth the standards for compliance with section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), which prohibits discrimination against individuals with disabilities and requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(b) Applicability. This part applies to all Government contracts and subcontracts in excess of \$10,000 for the purchase, sale or use of personal property or nonpersonal services (including construction): Provided, That subpart C of this part applies only as described in Sec. 60-741.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part: Provided, That compliance shall also satisfy the employment provisions of the Department of Labor's regulations implementing section 504 of the Rehabilitation Act of 1973 (see 29 CFR 32.2(b)) when the contractor is also subject to those requirements.

(c) Construction--(1) In general. Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title I of the Americans with Disabilities Act (ADA) of 1990, as amended, (42 U.S.C. 12101 et seq.) or the regulations issued by the Equal Employment Opportunity Commission pursuant to that title (29 CFR part 1630). The Interpretive Guidance on Title I of the Americans with Disabilities Act set out as an appendix to 29 CFR part 1630 issued pursuant to that title may be relied upon for guidance in interpreting the parallel non-discrimination provisions of this part.

(2) Benefits under State worker's compensation laws. Nothing in this part alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(3) Relationship to other laws. This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any State or political subdivision that provides greater or equal protection for the rights of individuals with disabilities as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

Sec. 60-741.2 Definitions.

For the purpose of this part:

(a) Act means the Rehabilitation Act of 1973, as amended, 29 U.S.C. 706 and 793.

(b) Compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of section 503 of the Rehabilitation Act of 1973.

(c) Contract means any Government contract or subcontract.

(d) Contractor means, unless otherwise indicated, a prime contractor or subcontractor holding a contract in excess of \$10,000.

(e) Direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual with a disability poses a direct threat shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.

(f) Director means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

(g) Disability--(1) The term disability means, with respect to an individual:

- (i) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (ii) A record of such an impairment; or
- (iii) Being regarded as having such an impairment (as defined in paragraph (w) of this section).

(2) As used in this part, the definition of "disability" must be construed in favor of broad coverage of individuals, to the maximum extent permitted by law. The question of whether an individual meets the definition under this part should not demand extensive analysis.

(3) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(4) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(5) See paragraphs (n), (p), (u), (w), and (aa) of this section, respectively, for definitions of "major life activities," "physical or mental impairment," "record of such an impairment," "regarded as having such an impairment," and "substantially limits."

(6) See Sec. 60-741.3 for exceptions to the definition of "disability."

(h) Equal opportunity clause means the contract provisions set forth in Sec. 60-741.5, "Equal opportunity clause."

(i) Essential functions--(1) In general. The term essential functions means fundamental job duties of the employment position the individual with a disability holds or desires. The term essential functions does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

- (i) The function may be essential because the reason the position exists is to perform that function;
- (ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
- (iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

- (i) The contractor's judgment as to which functions are essential;
- (ii) Written job descriptions prepared before advertising or interviewing applicants for the job;
- (iii) The amount of time spent on the job performing the function;
- (iv) The consequences of not requiring the incumbent to perform the function;
- (v) The terms of a collective bargaining agreement;
- (vi) The work experience of past incumbents in the job; and/or
- (vii) The current work experience of incumbents in similar jobs.

(j) Government means the Government of the United States of America.

(k) Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term "Government contract" does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) Construction, as used in paragraphs (k) and (y)(1) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(2) Contracting agency means any department, agency, establishment, or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) Modification means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(4) Nonpersonal services, as used in paragraphs (k) and (y)(1) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) Person, as used in paragraphs (k), (q), (v), (y), and (z) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(6) Personal property, as used in paragraphs (k) and (y)(1) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(l) Individual with a disability--See definition of "disability" in paragraph (g) of this section.

(m) Linkage agreement means an agreement describing the connection between contractors and appropriate recruitment and/or training sources. A linkage agreement is to be used by the contractor as a source of potential applicants with disabilities, as required in Sec. 60-741.44(f). The contractor's representative that signs the linkage agreement should be the company official responsible for the contractor's affirmative action program and/or has hiring authority.

(n) Major life activities--(1) In general. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(2) Major bodily functions. For purposes of paragraph (n)(1) of this section, a major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) In determining other examples of major life activities, the term "major" shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life."

(o) Mitigating measures--(1) In general. The term mitigating measures includes, but is not limited to:

(i) Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable accommodations or "auxiliary aids or services" (as defined by 42 U.S.C. 12103(1));

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(2) Ordinary eyeglasses or contact lenses. The term ordinary eyeglasses or contact lenses means lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(3) Low-vision devices. The term low-vision devices means devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses.

(4) Auxiliary aids and services. The term auxiliary aids and services includes--

(i) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(ii) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(iii) Acquisition or modification of equipment or devices; and

(iv) Other similar services and actions.

(p) Physical or mental impairment means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

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

(q) Prime contractor means any person holding a contract in excess of \$10,000, and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," includes any person who has held a contract subject to the act.

(r) Qualification standards means the personal and professional attributes including the skill, experience, education, physical, medical, safety, and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(s) Qualified individual means an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. See Sec. 60-741.3 for exceptions to this definition.

(t) Reasonable accommodation--(1) In general. The term reasonable accommodation means modifications or adjustments:

(i) To a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires;¹⁹ or

(ii) To the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) That enable the contractor's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees without disabilities.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustments or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation.²⁰ This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(4) Individuals who meet the definition of "disability" solely under the "regarded as" prong of the definition of "disability" as defined in paragraph (w)(1) of this section are not entitled to receive reasonable accommodation.

(u) Record of such 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. An individual shall be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment.

(v) Recruiting and training agency means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(w) Regarded as having such an impairment--(1) Except as provided in paragraph (w)(4) of this section, an individual is "regarded as having such an impairment" if the individual is subjected to an action prohibited under subpart B (Discrimination Prohibited) of these regulations because of an actual or perceived physical or mental impairment, whether or not the impairment substantially limits or is perceived to substantially limit a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment.

(2) Except as provided in paragraph (w)(4) of this section, an individual is "regarded as having such an impairment" any time a contractor takes a prohibited action against the individual because of an actual or perceived impairment, even if the contractor asserts, or may or does ultimately establish a defense to such action.

(3) Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability for unlawful discrimination in violation of this part. Such liability is established only when an individual proves that a contractor discriminated on the basis of disability as prohibited by this part.

(4) Impairments that are transitory and minor. Paragraph (w)(1) of this section shall not apply to an impairment that is shown by the contractor to be transitory and minor. The contractor must demonstrate that the impairment is both "transitory" and "minor." Whether the impairment at issue is or would be "transitory and "minor" is to be determined objectively. The fact that a contractor subjectively believed the impairment was transitory and minor is not sufficient to defeat an individual's coverage under paragraph (w)(1) of this section.

(i) An impairment is transitory if it has an actual or expected duration of six months or less.

(ii) [Reserved]

(x) Secretary means the Secretary of Labor, United States Department of Labor, or his or her designee.

(y) Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

¹⁹ A contractor's duty to provide a reasonable accommodation with respect to applicants with disabilities is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Applicants with disabilities must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

²⁰ Before providing a reasonable accommodation, the contractor is strongly encouraged to verify with the individual with a disability that the accommodation will effectively meet the individual's needs.

(z) Subcontractor means any person holding a subcontract in excess of \$10,000 and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," any person who has held a subcontract subject to the act.

(aa) Substantially limits--(1) In general. The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by law. "Substantially limits" is not meant to be a demanding standard and should not demand extensive analysis.

(i) An impairment is substantially limiting within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(ii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. However, nothing in this section is intended to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

(iii) In determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity. This may include consideration of facts such as the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.

(2) Non-applicability to the "regarded as" prong. Whether an individual's impairment substantially limits a major life activity is not relevant to a determination of whether the individual is regarded as having a disability within the meaning of Sec. 60-741.2(g)(1)(iii).

(3) Ameliorative effects of mitigating measures. Except as provided in paragraph (aa)(3)(i) of this section, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures as defined in Sec. 60-741.2(o).

(i) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered when determining whether an impairment substantially limits a major life activity. See Sec. 60-741.2(o)(2) for a definition of "ordinary eyeglasses or contact lenses."

(ii) Non-ameliorative effects of mitigating measures. The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(4) In determining whether an individual is substantially limited the focus is on how a major life activity is substantially limited, and not on the outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

(5) Predictable assessments. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, the principles set forth in this section are intended to provide for generous coverage through a framework that is predictable, consistent, and workable for all individuals and contractors with rights and responsibilities under this part.

Therefore, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under Sec. Sec. 60-741.2(g)(1)(i) or (ii). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. With respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(i) Examples of predictable assessments. Applying the principles set forth in this section it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis (MS) substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder (PTSD), obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may also substantially limit additional major life activities not explicitly listed above.

(ii) [Reserved]

(bb) Undue hardship--(1) In general. Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (bb)(2) of this section.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(cc) United States, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

Sec. 60-741.3 Exceptions to the definitions of "disability" and "qualified individual."

(a) Current illegal use of drugs--(1) In general. The terms "disability" and "qualified individual" do not include individuals currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use.

(2) "Drug" defined. The term drug means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(3) "Illegal use of drugs" defined. The term illegal use of drugs means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as updated pursuant to that act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(4) Construction. (i) Nothing in paragraph (a)(1) of this section shall be construed to exclude from the definition of disability or qualified individual an individual who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) In order to be protected by section 503 and this part, an individual described in paragraph (a)(4)(i) of this section must, as appropriate, satisfy the requirements of the definition of disability and qualified individual.

(5) Drug testing. It shall not be a violation of this part for the contractor to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (a)(4)(i)(A) and (B) of this section is no longer engaging in the illegal use of drugs. (See Sec. 60-741.24(b)(1).)

(b) Alcoholics--(1) In general. The terms disability and qualified individual do not include an individual who is an alcoholic whose current use of alcohol prevents such individual from performing the essential functions of the employment position such individual holds or desires or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or to the health or safety of the individual or others.

(2) Duty to provide reasonable accommodation. Nothing in paragraph (b)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (b)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desire, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education, and other job-related requirements of such position.

(c) Contagious disease or infection--(1) In general. The terms disability and qualified individual do not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of the individual or others or who, by reason of the currently contagious disease or infection, is unable to perform the essential functions of the employment position such individual holds or desires.

(2) Duty to provide reasonable accommodation. Nothing in paragraph (c)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (c)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education, and other job-related requirements of such position.

(d) Homosexuality and bisexuality. Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.

(e) Other conditions. The term disability does not include:

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.

Sec. 60-741.4 Coverage and waivers.

(a) Coverage--(1) Contracts and subcontracts in excess of \$10,000. Contracts and subcontracts in excess of \$10,000 are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) Contracts and subcontracts for indefinite quantities. With respect to indefinite delivery-type contracts and subcontracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will not be in excess of \$10,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) Employment activities within the United States. This part applies only to employment activities within the United States and not to employment activities abroad. The term employment activities within the United States includes actual employment within the United States, and decisions of the contractor made within the United States, pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) Contracts with State or local governments. The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) Waivers--(1) Specific contracts and classes of contracts. The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the act.

When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) National security. Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

(3) Facilities not connected with contracts.

(i) Upon the written request of the contractor, the Director may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities if the Director finds that the contractor has demonstrated that:

(A) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(B) Such a waiver will not interfere with or impede the effectuation of the act.

(ii) The Director's findings as to whether the facility is separate and distinct in all respects from activities of the contractor related to the performance of a contract shall include consideration of the following factors:

(A) Whether any work at the facility directly or indirectly supports or contributes to the satisfaction of the work performed on a Government contract;

(B) The extent to which the facility benefits, directly or indirectly, from a Government contract;

(C) Whether any costs associated with operating the facility are charged to a Government contract;

(D) Whether working at the facility is a prerequisite for advancement in job responsibility or pay, and the extent to which employees at facilities connected to a Government contract are recruited for positions at the facility;

(E) Whether employees or applicants for employment at the facility may perform work related to a Government contract at another facility, and the extent to which employees at the facility are interchangeable with employees at facilities connected to a Government contract; and

(F) Such other factors that the Director deems are necessary or appropriate for considering whether the facility is in all respects separate and distinct from the activities of the contractor related to

the performance of a contract.

(iii) The Director's findings as to whether granting a waiver will interfere with or impede the effectuation of the act shall include consideration of the following factors:

(A) Whether the waiver will be used as a subterfuge to circumvent the contractor's obligations under the act;

(B) The contractor's compliance with the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

(C) The impact of granting the waiver on OFCCP enforcement efforts; and

(D) Such other factors that the Director deems are necessary or appropriate for considering whether the granting of the waiver would interfere with or impede the effectuation of the act.

(iv) A contractor granted a waiver under paragraph (b)(3) of this section shall:

(A) Promptly inform the Director of any changed circumstances not reflected in the contractor's waiver request; and

(B) Permit the Director access during normal business hours to the contractor's places of business for the purpose of investigating whether the facility granted a waiver meets the standards and requirements of paragraph (b)(3) of this section, and for inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation.

(v)(A) A waiver granted under paragraph (b)(3) of this section shall terminate on one of the following dates, whichever is earliest:

(1) Two years after the date the waiver was granted.

(2) When the facility performs any work that directly supports or contributes to the satisfaction of the work performed on a Government contract.

(3) When the Director determines, based on information provided by the contractor under this section or upon any other relevant information, that the facility does not meet the requirements of paragraph (b)(3) of this section.

(B) When a waiver terminates in accordance with paragraph (b)(3)(v)(A) of this section the contractor shall ensure that the facility complies with this part on the date of termination, except that compliance with Sec. Sec. 60-741.40 through 60-741.45, if applicable, must be attained within 120 days of such termination.

(vi) False or fraudulent statements or representations made by a contractor under paragraph (b)(3) of this section are prohibited and may subject the contractor to sanctions and penalties under this part and criminal prosecution under 18 U.S.C. 1001.

Sec. 60-741.5 Equal opportunity clause.

(a) Government contracts. Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

1. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs; and

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with

disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

[End of Clause]

(b) Subcontracts. Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) Adaption of language. Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) Inclusion of the equal opportunity clause in the contract. It shall be necessary to include the equal opportunity clause verbatim in the contract.

(e) Incorporation by operation of the act. By operation of the act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) Duties of contracting agencies. Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in Sec. 60-741.66 as may be ordered by the Secretary or the Director.

Subpart B--Discrimination Prohibited

Sec. 60-741.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

- (a) Recruitment, advertising, and job application procedures;
- (b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (c) Rates of pay or any other form of compensation and changes in compensation;
- (d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (e) Leaves of absence, sick leave, or any other leave;
- (f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
- (g) Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
- (h) Activities sponsored by the contractor including social and recreational programs; and
- (i) Any other term, condition, or privilege of employment.

Sec. 60-741.21 Prohibitions.

(a) The term discrimination includes, but is not limited to, the acts described in this section and Sec. 60-741.23.

(1) Disparate treatment. It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual on the basis of disability.

(2) Limiting, segregating and classifying. Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability. For example, the contractor may not segregate employees into separate work areas or into separate lines of advancement on the basis of disability.

(3) Contractual or other arrangements--(i) In general. It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(ii) Contractual or other arrangement defined. The phrase contractual or other arrangement or relationship includes, but is not limited to, a relationship with: An employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(iii) Application. This paragraph (a)(3) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(4) Standards, criteria or methods of administration. It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(i) Have the effect of discriminating on the basis of disability; or

(ii) Perpetuate the discrimination of others who are subject to common administrative control.

(5) Relationship or association with an individual with a disability. It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association.

(6) Not making reasonable accommodation. (i) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability as defined in Sec. Sec. 60-741.2(g)(1)(i) or (ii), unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(ii) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(iii) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

(iv) A contractor is not required to provide reasonable accommodation to an individual who satisfies only the "regarded as having such an impairment" prong of the definition of "disability," as defined in Sec. 60-741.2(w)(1).

(7) Qualification standards, tests and other selection criteria--

(i) In general. It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude an individual with a disability or a class of individuals with disabilities on the basis of disability but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions.

(ii) Qualification standards and tests related to uncorrected vision. It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the contractor, is shown to be job-related for the position in question and consistent with business necessity. An individual challenging a contractor's application of a qualification standard, test, or other criterion based on uncorrected vision need not be an individual with a disability, but must be adversely affected by the application of the standard, test, or other criterion.

(iii) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3, do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

(8) Administration of tests. It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(9) Compensation. In offering employment or promotions to individuals with disabilities, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source. Nor may the contractor reduce the amount of compensation offered to an individual with a disability because of the actual or anticipated cost of a reasonable accommodation the individual needs or may request.

(b) Claims of No Disability. Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of the lack of disability, or because an individual with a disability was granted an accommodation that was denied to an individual without a disability.

Sec. 60-741.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See Sec. 60-741.2(e) defining direct threat.)

Sec. 60-741.23 Medical examinations and inquiries.

(a) Prohibited medical examinations or inquiries. Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(b) Permitted medical examinations and inquiries--(1) Acceptable pre-employment inquiry. The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) Employment entrance examination. The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(3) Examination of employees. The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) Other acceptable examinations and inquiries. The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. These medical examinations and activities do not have to be job-related and consistent with business necessity.

(5) Medical examinations conducted in accordance with paragraph (b)(2) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees with disabilities as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) Invitation to self-identify. The contractor shall invite the applicant to self-identify as an individual with a disability as specified in Sec. 60-741.42.

(d) Confidentiality and use of medical information. (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, as amended, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

Sec. 60-741.24 Drugs and alcohol.

(a) Specific activities permitted. The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) Drug testing--(1) General policy. For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of Sec. 60-741.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) Transportation employees. Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of Sec. Sec. 60-741.23(b)(5) and (c).

Sec. 60-741.25 Health insurance, life insurance, and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(b) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(d) The contractor may not deny an individual with a disability equal access to insurance or subject an individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b), and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C--Affirmative Action Program

Sec. 60-741.40 General purpose and applicability of the affirmative action program requirement.

(a) General purpose. An affirmative action program is a management tool designed to ensure equal employment opportunity and foster employment opportunities for individuals with disabilities. An affirmative action program institutionalizes the contractor's commitment to equality in every aspect of employment and is more than a paperwork exercise. Rather, an affirmative action program is dynamic in nature and includes measurable objectives, quantitative analyses, and internal auditing and reporting systems that measure the contractor's progress toward achieving equal employment opportunity for individuals with disabilities.

(b) Applicability of the affirmative action program. (1) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of \$50,000 or more.

(2) Contractors described in paragraph (b)(1) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(3) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to Sec. 60-741.44(i).

(c) Submission of program to OFCCP. The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

Sec. 60-741.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment. In the

event that the contractor has employees who do not work at a physical establishment, the contractor shall inform such employees about the availability of the affirmative action program by other means.

Sec. 60-741.42 Invitation to self-identify.

(a) Pre-offer. (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This invitation shall be provided to each applicant when the applicant applies or is considered for employment, whichever comes first. The invitation may be included in the application materials for a position, but must be separable or detachable from the application.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(b) Post-offer. (1) At any time after the offer of employment, but before the applicant begins his or her job duties, the contractor shall invite the applicant to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(c) Survey of employees. The contractor shall invite each of its employees to inform the contractor, in an anonymous manner, whether he or she believes themselves to be an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This survey shall be conducted annually, using the language and manner prescribed by the Director and published on the OFCCP Web site.

(d) The contractor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The contractor shall keep all information on self-identification confidential, and shall maintain it in a data analysis file (rather than in the medical files of individual employees) in accordance with Sec. 60-741.23(d). The contractor shall provide self-identification information to OFCCP upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(g) Nothing in this section shall relieve the contractor from liability for discrimination in violation of section 503 or this part.

Sec. 60-741.43 Affirmative action policy.

Under the affirmative action obligations imposed by the act, contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in Sec. 60-741.20.

Sec. 60-741.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to the following elements:

(a) Policy statement. The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). The policy statement shall indicate the chief executive officer's support for the contractor's affirmative action program, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy shall state, among other things that the contractor will: Recruit, hire, train, and promote persons in all job titles, and ensure that all other personnel actions are administered without regard to disability; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of section 503 or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;

(3) Opposing any act or practice made unlawful by section 503 or its implementing regulations in this part, or any other Federal, State or local law requiring equal opportunity for individuals with disabilities; or

(4) Exercising any other right protected by section 503 or its implementing regulations in this part.

(b) Review of personnel processes. The contractor must ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, the contractor shall ensure that its use of information and communication

technology is accessible to applicants and employees with disabilities.²¹ The contractor shall review such processes on at least an annual basis and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. These procedures shall, at a minimum, include the following steps:

(1) For each applicant with a disability, the contractor must be able to identify:

- (i) Each vacancy for which the applicant was considered; and
- (ii) Each training program for which the applicant was considered.

(2) For each employee who is an individual with a disability, the contractor must be able to identify:

- (i) Each promotion for which the employee was considered; and
- (ii) Each training program for which the employee was considered.

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

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

(c) Physical and mental qualifications. (1) The contractor shall provide in its affirmative action program, and shall adhere to a schedule for the annual review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out individuals on the basis of disability, they are job-related for the position in question and are consistent with business necessity. The contractor shall document the methods used to complete the annual review, the results of the annual review, and any actions taken in response. These documents shall be retained as employment records subject to the recordkeeping requirements of Sec. 60-741.80.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification standards tend to screen out individuals on the basis of disability, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor has the burden to demonstrate that it has complied with the requirements of paragraph (c)(2) of this section.

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See Sec. 60-741.2(e) defining direct threat.) Once the contractor believes that a direct threat exists, the contractor shall create a statement of reasons supporting its belief, addressing each of the criteria for "direct threat" listed in Sec. 60-741.2(e). This statement shall be treated as a confidential medical record in accordance with Sec. 60-741.23(d), and shall be retained as an employment record subject to the recordkeeping requirements of Sec. 60-741.80.

(d) Reasonable accommodation to physical and mental limitations. As is provided in Sec. 60-741.21(a)(6), as a matter of nondiscrimination, the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, the contractor must ensure that its electronic or online job application systems are compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software. Also as a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) Harassment. The contractor must develop and implement procedures to ensure that its employees are not harassed on the basis of disability.

(f) External dissemination of policy, outreach, and positive recruitment. (1) Required outreach efforts. The contractor shall undertake the outreach and positive recruitment activities listed below:

²¹ There are a variety of resources that may assist contractors in assessing and ensuring the accessibility of its information and communication technology. These include the Web Content Accessibility Guidelines (WCAG 2.0) of the World Wide Web Consortium Web Accessibility Initiative, online at <http://www.w3.org/WAI/intro/wcag.php>, and the regulations implementing the accessibility requirements for federal agencies prescribed in section 508 of the Rehabilitation Act. Information on section 508 may be found online at <http://www.section508.gov/index.cfm>. This web site also provides information about various State accessibility requirements and initiatives.

(i) The contractor shall promptly list all employment openings with the Employment One-Stop Career Center (One-Stops) nearest the contractor's establishment. The contractor must provide the information about each job vacancy in the manner and format required by the appropriate One-Stop. The term all employment openings as used in this paragraph includes all full-time, part-time, and temporary positions except executive and senior management positions, positions that will be filled from within the contractor's organization, and positions lasting three days or less.

(ii) The contractor shall establish linkage agreements enlisting the assistance and support of either the local State Vocational Rehabilitation Service Agency (SVRA) office nearest the contractor's establishment or a local Employment Network (EN) organization (other than the contractor if the contractor is an EN) listed in the Social Security Administration's Ticket to Work Employment Network Directory (<http://www.yourtickettowork.com/endir>); and at least one of the following persons and organizations in recruiting and developing training opportunities for individuals with disabilities to fulfill its commitment to provide meaningful employment opportunities to such individuals:

(A) Entities funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through The Employer Assistance and Resource Network (EARN) (<http://www.earnworks.com>);

(B) The Employment One-Stop Career Center (One-Stops) nearest the contractor's establishment (any linkage agreement with the One-Stop must be in addition to the job listing requirement in paragraph (f)(1)(i));

(C) The Department of Veterans Affairs Regional Office nearest the contractor's establishment (http://www.va.gov/landing2_locations.htm);

(D) Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;

(E) Placement or career offices of educational institutions; and

(F) Private recruitment sources, such as professional organizations or employment placement services.

(iii) The contractor shall also consult the Employer Resources section of the National Resource Directory (http://www.nationalresourcedirectory.gov/employment/employer_resources), or any future service that replaces or complements it, and establish a linkage agreement with one or more of the disabled veterans' service organizations listed on the directory, other than the agencies listed in (f)(1)(ii)(A) through (E) of this section, for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training, and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(iv) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) Suggested outreach efforts. The contractor should consider taking the actions listed below to fulfill its commitment to provide meaningful employment opportunities to individuals with disabilities:

(i) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(ii) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are individuals with disabilities.

(iii) An effort should be made to participate in work-study programs for students, trainees, or interns with disabilities. Such programs may be found through outreach to State and local schools and universities, and through EARN.

(iv) Individuals with disabilities should be made available for participation in career days, youth motivation programs, and related

activities in their communities.

(v) The contractor should take any other positive steps it deems necessary to attract individuals with disabilities not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through State and local agencies supported by the U.S.

Department of Education's Rehabilitation Services Administration (RSA)

(<http://www2.ed.gov/about/offices/list/osers/rsa>), local Ticket-to-Work

Employment Networks (<http://www.yourtickettowork.com>), or local

chapters of groups or organizations that provide services for individuals with disabilities.

(vi) The contractor, in making hiring decisions, shall consider applicants who are known to have disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(3) Assessment of external outreach and recruitment efforts. The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort

was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts shall be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) Recordkeeping obligation. The contractor shall document all linkage agreements and all other activities it undertakes to comply with the obligations of this section, and retain these documents for a period of five (5) years.

(g) Internal dissemination of policy. (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory, and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

- (i) Include it in the contractor's policy manual;
- (ii) Discuss the policy thoroughly in any employee orientation and management training programs;
- (iii) If the contractor is a party to a collective bargaining agreement, it shall meet with union officials and/or employee representatives to inform them of the contractor's policy and request their cooperation;

(3) The contractor shall document those activities it undertakes to comply with the obligations of paragraph (g) of this section and retain these documents as employment records subject to the recordkeeping requirements of Sec. 60-741.80.

(4) The contractor is encouraged to additionally implement and disseminate this policy internally by taking optional steps, such as the following:

(i) If the contractor has a company newspaper, magazine, annual report, or other paper or electronic publication distributed to employees, it should publicize its affirmative action policy in these publications, and include in these publications, where appropriate, features on employees with disabilities and articles on the accomplishments of individuals with disabilities, with their consent;

(ii) The contractor should discuss its affirmative action policies at employee meetings regarding personnel practices or equal employment opportunity;

(iii) The contractor should discuss its affirmative action policies with executive, management, and supervisory personnel at meetings regarding personnel practices or equal employment opportunity.

(h) Audit and reporting system. (1) The contractor shall design and implement an audit and reporting system that will:

- (i) Measure the effectiveness of the contractor's affirmative action program;
- (ii) Indicate any need for remedial action;
- (iii) Determine the degree to which the contractor's objectives have been attained;
- (iv) Determine whether known individuals with disabilities have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of Sec. 60-741.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) Responsibility for implementation. An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity shall appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) Training. In addition to the training set forth in paragraph (g)(2)(ii) of this section, all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented. This training shall include, but not be limited to: the benefits of employing individuals with disabilities, appropriate sensitivity toward applicants and employees with disabilities, and the legal responsibilities of the contractor and its agents regarding individuals with disabilities, including the obligation to provide reasonable accommodation to qualified individuals with disabilities. The contractor shall create contemporaneous records documenting the specific subject matter(s) covered in the training, who conducted the training, who received the training, and when the training took place. The contractor shall retain these documents, and any written or electronic materials used for the training required by this section, as employment records subject to the recordkeeping requirements of Sec. 60-741.80.

(k) Data Collection Analysis. The contractor shall document and maintain the following computations or comparisons pertaining to applicants and hires on an annual basis:

(1) The number of referrals of individuals with disabilities that the contractor received from applicable employment service delivery system(s), such as State Vocational Rehabilitation Service Agencies and Employment One-Stop Career Centers;

- (2) The number of referrals of individuals with disabilities that the contractor received from other entities, groups, or organizations with which the contractor has a linkage agreement pursuant to paragraph (f)(1)(i).
- (3) The number of applicants who self-identified as individuals with disabilities pursuant to Sec. 60-741.42(a), or who are otherwise known to be individuals with disabilities;
- (4) The total number of job openings and total number of jobs filled;
- (5) The ratio of jobs filled to job openings;
- (6) The total number of applicants for all jobs;
- (7) The ratio of applicants with disabilities to all applicants ("applicant ratio");
- (8) The number of applicants with disabilities hired;
- (9) The total number of applicants hired; and
- (10) The ratio of individuals with disabilities hired to all hires ("hiring ratio"). The number of hires shall include all employees.

Sec. 60-741.45 Reasonable accommodation procedures.

(a) Development and implementation. The contractor shall develop and implement written procedures for processing requests for reasonable accommodation. Contractors that are not required to develop an affirmative action program pursuant to this subpart are encouraged to voluntarily develop and implement written reasonable accommodation procedures to assist the contractor in meeting its nondiscrimination obligations under subpart B of this part.

(1) The contractor's reasonable accommodation procedures shall be included in the contractor's affirmative action program, and shall be developed and implemented in compliance with section 503 and this part.

(2) Minimum required elements that shall be addressed or contained in the reasonable accommodation procedures are described in paragraph (d) of this section. Inclusion of these elements in all reasonable accommodation procedures will ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. It will also ensure that all of the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for accommodation are processed swiftly and within established timeframes.

(b) Designation of responsibility. The contractor shall designate an official to be responsible for the implementation of the reasonable accommodation procedures. The responsible official may be the same official who is responsible for the implementation of the contractor's affirmative action program. The responsible official must have the authority, resources, support, and access to top management that is needed to ensure the effective implementation of the reasonable accommodation procedures.

(c) Dissemination of procedures. (1) The contractor shall disseminate its reasonable accommodation procedures to all employees. Notice of the reasonable accommodation procedures may be provided by their inclusion in an employee handbook that is disseminated to all employees and/or by email or electronic posting on a company Web page where work-related notices are ordinarily posted. Notice of the reasonable accommodation procedures shall be provided to employees who work off-site in the same manner that notice of other work-related matters is ordinarily provided to these employees.

(2) The contractor shall inform all applicants of its reasonable accommodation procedures regarding the application process. See paragraph (d)(2)(iii) of this section.

(d) Required elements of reasonable accommodation procedures. The specific requirements of a contractor's reasonable accommodation procedures may vary depending upon the size, structure, and resources of the contractor. However, the contractor's reasonable accommodation procedures shall, at a minimum, include the following elements:

(1) Responsible official contact information. The name, title/office, and contact information (telephone number and email address) of the official designated as responsible for implementing the reasonable accommodation procedures pursuant to paragraph (b) of this section. This information should be updated when changes occur.

(2) Requests for reasonable accommodation. The reasonable accommodation procedures shall specify that a request for reasonable accommodation may be oral or written and shall explain that there are no required words that must be used by the requester to effectuate a request for accommodation. The procedures shall also state that requests for reasonable accommodation may be made by an applicant, employee, or by a third party on his or her behalf.

(i) Recurring requests. The reasonable accommodation procedures shall provide that in instances of a recurring need for an accommodation (e.g., a hearing impaired employee's need for a sign language interpreter) the requester will not be required to repeatedly submit or renew their request for accommodation each time an interpreter is needed. In the absence of a reasonable belief that the individual's recurring need for the accommodation has changed, requiring the repeated submission of a request for the accommodation could be considered harassment on the basis of disability in violation of this part.

(ii) Submission of request. The reasonable accommodation procedures shall identify to whom an employee (or a third party acting on his or her behalf) must submit an accommodation request. At a minimum, this shall include any supervisor or management official in the employee's chain of command, and the official responsible for the implementation of the reasonable accommodation procedures.

(iii) Requests made by applicants. The reasonable accommodation procedures shall include procedures to ensure that all applicants, including those using the contractor's online or other electronic application system, are made aware of the contractor's reasonable accommodation obligation and are invited to request any reasonable accommodation needed to participate fully in the application process. All applicants shall also be provided with contact information for contractor staff able to assist the applicant, or his or her representative, in making a request for accommodation. The contractor's procedures shall provide that reasonable accommodation requests by or on behalf of an applicant are processed expeditiously, using timeframes tailored to the application process.

(3) Written confirmation of receipt. The reasonable accommodation procedures shall specify that written confirmation of receipt of a request will be provided to the requester, either by letter or email. The written confirmation shall include the date the accommodation request was received, and be signed by the authorized decision maker or his or her designee.

(4) Timeframe for processing requests. (i) The reasonable accommodation procedures shall indicate that requests for accommodation will be processed as expeditiously as possible. Oral requests must be considered received on the date they are initially made, even if a reasonable accommodation request form has not been completed. A contractor may set its own timeframes for completing the processing of requests. However, if supporting medical documentation is not needed, that timeframe shall not be longer than 5 to 10 business days. If supporting medical documentation is needed, or if special equipment must be ordered, that timeframe shall not exceed 30 calendar days, except in the event of extenuating circumstances beyond the control of the contractor. The procedures shall explain what constitutes extenuating circumstances.

(ii) Delay in responding to request. If the contractor's processing of an accommodation request will exceed established timeframes, written notice shall be provided to the requester. The notice shall include the reason(s) for the delay and a projected date of response. The notice shall also be dated and signed by the authorized decision maker or his or her designee.

(5) Description of process. The contractor's reasonable accommodation procedures shall contain a description of the steps the contractor takes when processing a reasonable accommodation request, including the process by which the contractor renders a final determination on the accommodation request. If specific information must be provided to the contractor in order to obtain a reasonable accommodation, the description shall identify this information. For example, the contractor's reasonable accommodation procedures may state that to obtain a reasonable accommodation, the contractor must be informed of the existence of a disability, the disability-related limitation(s) or workplace barrier(s) that needs to be accommodated, and, if known, the desired reasonable accommodation. The description shall also indicate that, if the need for accommodation is not obvious, or if additional information is needed, the contractor may initiate an interactive process with the requester.

(6) Supporting medical documentation. The reasonable accommodation procedures shall explain the circumstances, if any, under which medical documentation may be requested and reviewed by the contractor.

(i) The procedures shall explain that any request for medical documentation may not be open ended and must be limited to documentation of the individual's disability and the functional limitations for which reasonable accommodation is sought.

(ii) The procedures shall also explain that the submission of medical documentation is not required when the disability for which a reasonable accommodation is sought is known or readily observable and the need for accommodation is known or obvious.

(7) Denial of reasonable accommodation. The contractor's reasonable accommodation procedures shall specify that any denial or refusal to provide a requested reasonable accommodation will be provided in writing. The written denial shall include the reason for the denial and must be dated and signed by the authorized decision maker or his or her designee. A statement of the requester's right to file a discrimination complaint with OFCCP shall also accompany or be included in the written denial. If the contractor provides an internal appeal or reconsideration process, the written denial shall inform the requester about this process. The written denial shall also include a clear statement that participation in the internal appeal or reconsideration process does not toll the time for filing a complaint with OFCCP or EEOC.

(8) Confidentiality. The contractor's reasonable accommodation procedures shall indicate that all requests for reasonable accommodation, related documentation (such as request confirmation receipts, requests for additional information, and decisions regarding accommodation requests), and any medical or disability-related information provided to the contractor will be treated as a confidential medical record and maintained in a separate medical file, in accordance with section 503 and this part.

(e) Training. The contractor shall provide annual training for its supervisors and managers regarding the implementation of the reasonable accommodation procedures. Training shall also be provided whenever significant changes are made to the reasonable accommodation procedures. Training regarding the reasonable accommodation procedures may be provided in conjunction with other required equal employment opportunity or affirmative action training.

Sec. 60-741.46 Utilization goals.

(a) Goal. OFCCP has established a utilization goal of 7% for employment of individuals with disabilities for each job group in the contractor's workforce.

(b) Purpose. The purpose of the utilization goal is to establish a benchmark against which the contractor must measure the representation of individuals within each job group in its workforce. The utilization goal serves as an equal employment

opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of this part.

(c) Periodic review of goal. The Director of OFCCP shall periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) Utilization analysis--(1) Purpose. The utilization analysis is designed to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. If individuals with disabilities are employed in a job group at a rate less than the utilization goal, the contractor must take specific measures to address this disparity.

(2) Grouping jobs for analysis. The contractor must use the same job groups established for utilization analyses under Executive Order 11246, either in accordance with 41 CFR 60-2.12, or in accordance with 41 CFR part 60-4, as appropriate.

(3) Annual evaluation. The contractor shall evaluate its utilization of individuals with disabilities in each job group annually.

(e) Action-oriented programs. When the percentage of individuals with disabilities in one or more job groups is less than the utilization goal established in paragraph (a) of this section, the contractor must develop and execute action-oriented programs designed to correct any identified problem areas. These action-oriented programs may include alternative or additional efforts from among those listed in Sec. Sec. 60-741.44 (f)(1) and (f)(2), and/or other actions designed to correct the identified problem areas and attain the established goal.

(f) A contractor's determination that it has not attained the utilization goal established in paragraph (a) of this section in one or more job groups does not constitute either a finding or admission of discrimination in violation of this part.

(g) The utilization goal established in paragraph (a) of this section shall not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities.

Sec. 60-741.47 Providing priority consideration in employment.

(a) The contractor is encouraged to voluntarily develop and implement programs that provide priority consideration to individuals with disabilities in recruitment and/or hiring. Examples of priority consideration programs include, but are not limited to, assigning a weighted value or additional "points" to job applicants who self-identify as being an individual with a disability, and developing a job training program focused on the specific needs of individuals with certain disabilities such as traumatic brain injury (TBI) or developmental disabilities and utilizing linkage agreements to recruit program trainees.

(1) If a contractor elects to implement a priority consideration program for individuals with disabilities, a description of the program and the policies governing the program, including the name and title of the official responsible for the program, shall be included in the contractor's written affirmative action program. An annual report describing the contractor's activities pursuant to the priority consideration program and identifying the outcomes achieved should also be included in the contractor's affirmative action program.

(2) Disability-related information from the applicant and/or employee self-identification request required by Sec. 60-741.42 may be used to identify individuals with disabilities who are eligible to benefit from a priority consideration program.

(b) The contractor shall not use a priority consideration program to segregate individuals with disabilities or to limit or restrict the employment opportunities of any individual with a disability.

(c) The contractor shall not discriminate against an individual with a disability that has received priority consideration with respect to any term, condition, or benefit of employment, including, but not limited to, employment acts such as compensation, promotion, and termination, that are listed in Sec. 60-741.20.

Sec. 60-741.48 Sheltered workshops.

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified individuals with disabilities in the contractor's own work force. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become "qualified individuals with disabilities."

Subpart D--General Enforcement and Complaint Procedures

Sec. 60-741.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination on the basis of disability in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) Compliance review. A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. OFCCP may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part. The desk audit is conducted at OFCCP offices;

(ii) An on-site review is conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) Off-site review of records. An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of section 503 and its regulations;

(3) Compliance check. A determination of whether the contractor has maintained records consistent with Sec. 60-741.80; OFCCP may request the documents be provided either on-site or off-site; or

(4) Focused review. A review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to Sec. 60-741.62.

(c) Pre-award compliance evaluations. Each agency will include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should total \$10 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of \$10 million or more will be subject to a compliance evaluation before the award of the contract unless OFCCP has conducted an evaluation and found them to be in compliance with section 503 within the preceding 24 months. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. Within 15 days of the notice, OFCCP will inform the awarding agency of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a pre-award compliance evaluation, OFCCP will be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance will be presumed and the awarding agency is authorized to proceed with the award.

Sec. 60-741.61 Complaint procedures.

(a) Coordination with other agencies. Pursuant to section 107(b) of the Americans with Disabilities Act of 1990, as amended (ADA), OFCCP and the Equal Employment Opportunity Commission (EEOC) have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both the act and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part will be processed in accordance with those regulations, which are found at 41 CFR part 60-742, and with this part.

(b) Place and time of filing. Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint with the Director alleging a violation of the act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Complaints may be submitted to the OFCCP, 200 Constitution Avenue NW, Washington, DC 20210, or to any OFCCP regional, district, or area office. Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown.

(c) Contents of complaints. (1) In general. A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) The facts showing that the individual has a disability, a record or history of a disability, or was regarded by the contractor as having a disability;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) Third party complaints. When a written complaint is filed by an authorized representative, that complaint need not identify by name the person on whose behalf it is filed. However, the authorized representative must nonetheless provide the name, address and telephone number of the person on whose behalf the complaint is filed to OFCCP, along with the other information specified in paragraph (c)(1) of this section. OFCCP shall verify the authorization of such complaint with the person on whose behalf the complaint is filed. Any such person may request that OFCCP keep his or her identity confidential during the investigation of the complaint, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(d) Incomplete information. Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(e) Investigations. The Department of Labor shall institute a prompt investigation of each complaint.

(f) Resolution of matters. (1) If the complaint investigation finds no violation of the act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to Sec. 60-741.65(a)(l), the complainant and contractor shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to Sec. 60-741.62.

Sec. 60-741.62 Conciliation agreements.

(a) If a compliance evaluation, complaint investigation, or other review by OFCCP finds a material violation of the act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement will be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

(b) Remedial benchmarks. The remedial action referenced in paragraph (a) may include the establishment of benchmarks for the contractor's outreach, recruitment, hiring, or other employment activities. The purpose of such benchmarks is to create a quantifiable method by which the contractor's progress in correcting identified violations and/or deficiencies can be measured.

Sec. 60-741.63 Violations of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement, OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

Sec. 60-741.64 Show cause notices.

When the Director has reasonable cause to believe that the contractor has violated the act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see Sec. 60-741.65).

Sec. 60-741.65 Enforcement proceedings.

(a) General. (1) If a compliance evaluation, complaint investigation, or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any combination of these

outcomes. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance review. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service (IRS) for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in Sec. 60-741.5, including appropriate injunctive relief.

(b) Hearing practice and procedure. (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60-30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: Provided, That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions, and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any) whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60-30 to "Executive Order 11246" shall mean section 503 of the Rehabilitation Act of 1973, as amended; references to "equal opportunity clause" shall mean the equal opportunity clause published at Sec. 60-741.5; and references to "regulations" shall mean the regulations contained in this part.

Sec. 60-741.66 Sanctions and penalties.

(a) Withholding progress payments. With the prior approval of the Director so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the act or this part.

(b) Termination. A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the act or this part.

(c) Debarment. A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the act or this part subject to reinstatement pursuant to Sec. 60-741.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months, but no more than three years.

(d) Hearing opportunity. An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

Sec. 60-741.67 Notification of agencies.

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

Sec. 60-741.68 Reinstatement of ineligible contractors.

(a) Application for reinstatement. A contractor debarred from further contracts for an indefinite period under the act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the act and this part.

Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the act or this part. Before reaching a decision, the Director may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Director shall issue a written decision on the request.

(b) Petition for review. Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and Labor-Management and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

Sec. 60-741.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;

(3) Opposing any act or practice made unlawful by the act or this part or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities; or

(4) Exercising any other right protected by the act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion, or discrimination. The sanctions and penalties contained in this part may be exercised by the Director against any contractor who violates this obligation.

Sec. 60-741.70 Disputed matters related to compliance with the act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E--Ancillary Matters

Sec. 60-741.80 Recordkeeping.

(a) General requirements. Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation, or action until final disposition of the complaint, compliance evaluation or action. The term "personnel records relevant to the complaint, compliance evaluation, or action" will include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. Records required by Sec. Sec. 60-741.44(f)(4) and 60-741.44(k) shall be maintained by all contractors for a period of five years from the date of the making of the record.

(b) Failure to preserve records. Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor. Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after August 29, 1996.

Sec. 60-741.81 Access to records.

Each contractor must permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material OFCCP deems relevant to the matter under investigation and pertinent to compliance with the act or this part. Contractors must also provide OFCCP access to these materials, including electronic records, off-site for purposes of conducting compliance evaluations and complaint investigations. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which its records and other information are available. The contractor must provide records and other information in any available format(s) requested by OFCCP. Information obtained in this manner shall be used only in connection with the administration of the act, the Americans with Disabilities Act of 1990, as amended (ADA), and in furtherance of the purposes of the act and the ADA.

Sec. 60-741.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency, or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.

Sec. 60-741.83 Rulings and interpretations.

Rulings under or interpretations of the act and this part shall be made by the Director.

Appendix A to Part 60-741--Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

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

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in Sec. 60-741.2(s), an individual with a disability is qualified if he or she satisfies all the skill, experience, education, and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is qualified within the meaning of section 503 if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions. Additionally, as provided in Sec. 60-741.45, the contractor is required to develop, implement and disseminate to applicants and employees procedures for processing requests for reasonable accommodation. This will help ensure consistent and expeditious processing of all accommodation requests.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide reasonable accommodation for applicants and employees whose disabilities the contractor has actual knowledge. As stated in Sec. 60-741.42, as part of the contractor's affirmative action obligation, the contractor is required to invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability both prior to an offer of employment, and after an offer of employment but before he or she begins his/her employment duties. That invitation also informs the applicant of the contractor's reasonable accommodation obligation and invites applicants with disabilities to request any accommodation they might need. Moreover, Sec. 60-741.44(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered--those of the contractor in its entirety or only those of the facility that will be required to

provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source (e.g., a State vocational rehabilitation agency) or if Federal, State, or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the individual with a disability must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for "reasonable accommodation" in Sec. 60-741.2(t) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are a number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the individual with a disability in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate State vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1-(800) 669-4000 (voice) or 1-(800) 669-6820 (TTY)), the Job Accommodation Network (JAN)--a service of the U.S. Department of Labor's Office of Disability Employment Policy (1-(800) 526-7234 (voice) or 1-(877) 781-9403 (TTY)), private disability organizations, and other employers.

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

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

8. Another of the potential accommodations listed in Sec. 60-741.2(t) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified individual with a disability cannot perform to another position. Accordingly, if a clerical employee is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor that has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind individual with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the individual with a disability. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit individuals with disabilities who cannot work a standard schedule because of the need to obtain medical treatment, or individuals with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

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

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

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to those with vision or hearing impairments (e.g., by making an announcement available in Braille, in large print, or on audio tape, or by responding to job inquiries via TTY); (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations (e.g., extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her disability to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices); and (4) ensuring an applicant with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

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 voting check off graphic	MOTION: To direct the Employment Committee to review the proposed revisions to <u>Part 60-741--Affirmative Action And Nondiscrimination Obligations Of Federal Contractors And Subcontractors Regarding Individuals With Disabilities</u> regulation and prepare comments on the regulation for consideration by the Executive Committee LW/TT passed unanimously		
 Announcer graphic	Announcements The Providence Journal has reversed course and is again providing a feed into Newline the telephonic reading of newspapers.	Tim Flynn	5:25
 The end graphic	Adjournment	Tim Flynn	5:30
 voting check off graphic	MOTION: To adjourn adopted at 5:27 PM RMcM/RC passed unanimously		