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Subtitle B — Regulations Relating to Labor

Chapter I — National Labor Relations Board

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PART 100—ADMINISTRATIVE REGULATIONS

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 141, 156).

Subpart A is also issued under 5 U.S.C. 7301.

Subpart B is also issued under the Inspector General Act of 1976, as amended by the Inspector General Act Amendments of 1988, 5 U.S.C. ap3; 42 U.S.C. 2000e-16(a).

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR part 14.

Subpart E is also issued under 29 U.S.C. 794.

Subpart F is also issued under 31 U.S.C. 3711 and 3716-3719, as amended, 31 CFR part 285, 31 CFR chapter IX parts 900-904.

Subpart A—Employee Responsibilities and Conduct

§ 100.101 Cross-reference to financial disclosure requirements and other conduct rules.

Employees of the National Labor Relations Board (NLRB) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; the NLRB's regulations at 5 CFR part 7101, which supplement the executive branch-wide standards; the employee responsibilities and conduct regulations at 5 CFR part 735; and the executive branch financial disclosure regulations at 5 CFR part 2634.

[62 FR 6448, Feb. 12, 1997]

Subpart B—Cooperation in Audits and Investigations

§ 100.201 Audits and investigations.

- (a) Employees shall cooperate fully with any audit or investigation conducted by the Office of the Inspector General involving matters that fall within the jurisdiction and authority of the Inspector General, as defined in the Inspector General Act of 1978, as amended, or with any audit or investigation conducted by any Agency official or department, including, but not limited to, the Office of Equal Employment Opportunity, involving matters that relate to or have an effect on the official business of the Agency. Such cooperation shall include, among other things, responding to requests for information, providing statements under oath relating to such audits or investigations, and affording access to Agency records and/or any other Agency materials in an employee's possession.
- (b) The obstruction of an audit or investigation, concealment of information, intentional furnishing of false or misleading information, refusal to provide information and/or answer questions, or refusal to provide a statement under oath, by an employee to an auditor or investigator pursuant to any audit or investigation as described in paragraph (a) of this section, may result in disciplinary action against an employee. However, nothing herein shall be construed to deny, abridge, or otherwise restrict the rights, privileges, or other entitlements or protections afforded to Agency employees.

[59 FR 37158, July 21, 1994]

Subpart C—Employee Personal Property Loss Claims [Reserved]

Subpart D—Claims Under the Federal Tort Claims Act

§ 100.401 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

- (a) **Scope of regulations.** These regulations apply to administrative claims filed under the Federal Tort Claims Act (28 U.S.C. 2672), as amended, for money damages against the United States for damage to or loss of property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The regulations in this part supplement the Department of Justice's regulations in 28 CFR part 14.
- (b) **Filing a claim.** Claims may be submitted to the Associate General Counsel, Division of Legal Counsel, Headquarters, National Labor Relations Board, Washington, DC 20570 at any time within 2 years after such claim has accrued. The current address for Headquarters can be found at www.nlr.gov. Such claim

may be presented by a person specified in 28 CFR 14.3. An executed Standard Form 95, *Claim for Damage, Injury, or Death*, or written notification must be submitted and accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

- (c) **Amendment of claim.** A claim submitted in compliance with this subpart may be amended by the claimant at any time prior to final action by the National Labor Relations Board or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the National Labor Relations Board shall have six months to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after filing of an amendment.
- (d) **Action on claims.** The Associate General Counsel, Division of Legal Counsel, shall have the power to consider, ascertain, adjust, determine, compromise, or settle any claim submitted in accordance with paragraph (a) of this section. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 1.
- (e) **Legal review of claims.** In accordance with 28 CFR 14.5, legal review is required if the amount of a proposed settlement, compromise, or award exceeds \$5,000. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 14.
- (f) **Payment of awards.** Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this action will be paid by the Chief Financial Officer out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount greater than \$2,500 will be paid in accordance with 28 CFR 14.10.
- (g) **Acceptance of payment constitutes release.** Acceptance by a claimant, his or her agent or legal representative of any award, compromise, or settlement made pursuant to this part shall be final and conclusive on the claimant, his or her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been submitted, and shall constitute a complete release of any claims against the United States, the National Labor Relations Board, and any employee of the government whose act or omission gave rise to the claim.

[81 FR 19487, Apr. 5, 2016]

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board

Source: 53 FR 25884, 25885, July 8, 1988, unless otherwise noted. Redesignated at 59 FR 37159, July 21, 1994.

§ 100.501 Purpose.

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

§ 100.502 Application.

This regulation (§§ 100.501-100.570) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

[53 FR 25884, 25885, July 8, 1988. Redesignated at 59 FR 37159, July 21, 1994, and amended at 60 FR 32587, June 23, 1995]

§ 100.503 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

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

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

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

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

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

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) **Physical or mental impairment** includes—

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

- (ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.
- (2) **Major life activities** includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (3) **Has a record of such an impairment** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) **Is regarded as having an impairment** means—
 - (i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;
 - (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

- (1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;
- (2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;
- (3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and
- (4) **Qualified handicapped person** as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 100.540.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

[53 FR 25884, 25885, July 8, 1988. Redesignated at 59 FR 37159, July 21, 1994, and amended at 60 FR 32587, June 23, 1995]

§§ 100.504-100.509 [Reserved]

§ 100.510 Self-evaluation.

- (a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.
- (b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).
- (c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
 - (1) A description of areas examined and any problems identified; and
 - (2) A description of any modifications made.

§ 100.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 100.512-100.529 [Reserved]

§ 100.530 General prohibitions against discrimination.

- (a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.
- (b)
 - (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—
 - (i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

- (v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;
 - (vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—
 - (i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or
 - (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
- (4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—
 - (i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or
 - (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
- (5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.
- (6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.
- (c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.
- (d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 100.531-100.539 [Reserved]

§ 100.540 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 100.541-100.548 [Reserved]

§ 100.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 100.550, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

[53 FR 25884, 25885, July 8, 1988. Redesignated at 59 FR 37159, July 21, 1994, and amended at 60 FR 32587, June 23, 1995]

§ 100.550 Program accessibility: Existing facilities.

- (a) **General.** The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—
 - (1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;
 - (2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or
 - (3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 100.550(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.
- (b) **Methods —**
 - (1) **General.** The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) **Historic preservation programs.** In meeting the requirements of § 100.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 100.550(a) (2) or (3), alternative methods of achieving program accessibility include—

- (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
- (ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or
- (iii) Adopting other innovative methods.

(c) **Time period for compliance.** The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) **Transition plan.** In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

- (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;
- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Indicate the official responsible for implementation of the plan.

[53 FR 25884, 25885, July 8, 1988. Redesignated at 59 FR 37159, July 21, 1994, and amended at 60 FR 32587, June 23, 1995]

§ 100.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 100.552-100.559 [Reserved]

§ 100.560 Communications.

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

- (1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.
 - (i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.
 - (ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.
- (2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.
- (b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.
- (c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.
- (d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 100.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

[53 FR 25884, 25885, July 8, 1988. Redesignated at 59 FR 37159, July 21, 1994, and amended at 60 FR 32587, June 23, 1995]

§§ 100.561-100.569 [Reserved]

§ 100.570 Compliance procedures.

- (a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.
- (b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).
- (c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration, National Labor Relations Board, 1099 Fourteenth Street NW., Washington, DC 20570.

- (d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.
- (e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.
- (f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.
- (g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—
 - (1) Findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found; and
 - (3) A notice of the right to appeal.
- (h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 100.170(g). The agency may extend this time for good cause.
- (i) Timely appeals shall be accepted and processed by the head of the agency.
- (j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.
- (k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.
- (l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25884, 25885, July 8, 1988, as amended at 53 FR 25884, July 8, 1988. Redesignated and amended at 59 FR 37159, July 21, 1994]

§§ 100.571-100.599 [Reserved]

Subpart F—Debt Collection Procedures

Source: 72 FR 40070, July 23, 2007, unless otherwise noted.

§ 100.601 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the National Labor Relations Board (NLRB) who are responsible for the collection and disposition of certain debts owed to the United States, as further defined below. The authority for this part is the Federal Claims Collection Act of 1966; the Debt Collection

Improvement Act of 1996; 31 U.S.C. 3711 and 3716 through 3719, as amended; The Federal Claims Collection Standards, 31 CFR chapter IX parts 900-904; and Office of Management and Budget Circular A-129. The activities covered include: the collection of claims of any amount; compromising claims; suspending or terminating the collection of claims; referring debts that are more than 180 days delinquent to the Department of the Treasury for collection action; and the referral of debts of more than \$100,000 (exclusive of any interest and charges) to the Department of Justice for litigation.

§ 100.602 Definitions.

For the purpose of this subpart, the following definitions will apply:

Administrative Offset means withholding money payable by the United States Government (including money payable by the United States Government on behalf of a State Government) to, or held by the Government for, a person to satisfy a debt the person owes the United States Government.

Centralized offset means the offset of Federal payments through the Treasury Offset Program to collect debts which creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a) and applicable regulations. The term "centralized offset" includes the Treasury Offset Program's processing of offsets of Federal payments disbursed by disbursing officials other than the Department of the Treasury.

Claim or debt means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States by a person, organization, or entity, except another Federal agency. For the purposes of *administrative offset* under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Cross-servicing means that the Department of the Treasury or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or sub-agency thereof.

Debtor means an individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

Delinquent refers to the status of a debt and means a debt has not been paid by the date specified in the initial written demand for payment or applicable contractual agreement with the NLRB, unless other satisfactory payment arrangements have been made by that date. If the debtor fails to satisfy obligations under a payment agreement with the NLRB after other payment arrangements have been made, the debt becomes a delinquent debt.

Payment in full means payment of the total debt due the United States, including any interest, penalty, and administrative costs of collection assessed against the debtor.

Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

§ 100.603 Debts that are covered.

- (a) The procedures covered by this part generally apply to claims for payment or debts which
 - (1) Result from certain internal management activities of the NLRB; or
 - (2) Are referred to the NLRB for collection.

- (b) The procedures covered by this part do not apply to
 - (1) A debt arising from, or ancillary to, any action undertaken by or on behalf of the NLRB or its General Counsel in furtherance of efforts to ensure compliance with the National Labor Relations Board Act, 29 U.S.C. 151, *et seq.*, including but not limited to actions involving the collection of monies owed for back pay and/or other monetary remedies provided for in Board orders or ancillary court proceedings. (Regulations concerning the collection of these types of debts are found in 29 CFR part 102, subparts U and V.);
 - (2) A debt involving criminal actions of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other person having an interest in the claim;
 - (3) A debt based in whole or in part on conduct in violation of the antitrust laws;
 - (4) A debt under the Internal Revenue Code of 1986;
 - (5) A debt between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409-412);
 - (6) A debt once it becomes subject to salary offset under 5 U.S.C. 5514; or
 - (7) A debt involving bankruptcy which is covered by Title 11 of the United States Code.
- (c) Debts involving criminal actions of fraud, false claims, misrepresentation, or which violate antitrust laws will be promptly referred to the Department of Justice. Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on such debts. However, at its discretion, the Department of Justice may return a debt to the NLRB for further handling.

§ 100.604 Monetary limitations on NLRB's authority.

The NLRB's authority to compromise a debt or to suspend or terminate collection action on a debt covered by these procedures is limited by 31 U.S.C. 3711(a) to claims that:

- (a) Have not been referred to another Federal Agency for further collection actions; and
- (b) Do not exceed \$100,000 (exclusive of any interest) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

§ 100.605 Information collection requirements: OMB approval.

This part contains no information collection requirements, and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

§ 100.606 No private rights created.

- (a) The failure of the NLRB to include in this part any provision of the Federal Collections Claim Standards (FCCS), 31 CFR chapter IX parts 900-904, does not prevent the NLRB from applying these provisions.
- (b) A debtor may not use the failure of the NLRB to comply with any provision of this part or of the FCCS as a defense.

§ 100.607 Form of payment.

These procedures are directed primarily at the recovery of money or, when a contractual basis exists, the NLRB may demand the return of specific property or the performance of specific services.

§ 100.608 Subdivision of claims or debts.

A debt may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2) and 29 CFR 100.604.

§ 100.609 Administrative collection of claims.

The NLRB shall aggressively collect all claims or debts. These collection activities will be undertaken promptly and follow up action will be taken as appropriate in accordance with 31 CFR chapter IX § 901.1.

§ 100.610 Written demand for payment.

- (a) The NLRB will promptly make written demand upon the debtor for payment of money or the return of specific property. The written demand for payment will be consistent with the requirements of 31 CFR chapter IX § 901.2. The date by which payment is due to avoid any late charges will be 60 days from the date that the demand letter is mailed or hand-delivered.
- (b) The failure to state in a letter of demand a matter described in 31 CFR chapter IX § 901.2 is not a defense for a debtor and does not prevent the NLRB from proceeding with respect to that matter.
- (c) When necessary, to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. It may be appropriate to contact a debtor or his representative or guarantor by other means (telephone, in person, etc.) to discuss prompt payment, the debtor's ability to repay the debt, and to inform the debtor of his rights and the affect of nonpayment or delayed payment.
- (d) When the NLRB learns that a bankruptcy petition has been filed with respect to a debtor, the NLRB will cease collection action immediately unless it has been determined that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect.

§ 100.611 Reporting claims or debts.

- (a) In addition to assessing interest, penalties, and administrative costs pursuant to 31 CFR chapter IX § 901.9, the NLRB may report a debt that has been delinquent for 90 days to a consumer reporting agency in accordance with the requirements of 31 U.S.C. 3711(e).
- (b) The information the NLRB discloses to a consumer reporting agency is limited to—
 - (1) Information necessary to establish the identity of the individual debtor, including name, address, and taxpayer identification number;
 - (2) The amount, status, and history of the debt; and
 - (3) The NLRB activity under which the debt arose.

§ 100.612 Disputed claims or debts.

- (a) A debtor who disputes a debt should provide the NLRB with an explanation as to why the debt is incorrect within 60 days from the date the initial demand letter was mailed or hand-delivered. The debtor may support the explanation by affidavits, cancelled checks, or other relevant evidence.
- (b) If the debtor's arguments appear to have merit, the NLRB may waive the interest period pursuant to 29 CFR 100.617(c) pending a final determination of the existence or the amount of the debt.
- (c) The NLRB may investigate the facts concerning the dispute and, if it considers it necessary, arrange for a conference at which the debtor may present evidence and any arguments in support of the debtor's position.

§ 100.613 Contracting for collection services.

The NLRB may contract for collection services in order to recover delinquent debts only if the debts are not subject to the DCIA requirement to transfer claims or debts to Treasury for debt collection services, e.g., claims or debts of less than 180 days delinquent. However, the NLRB retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the NLRB shall contract for collection services in accordance with guidance and standards contained in 31 CFR chapter IX parts 900-904.

§ 100.614 Collection by administrative offset.

- (a) **Application.**
 - (1) The NLRB may administratively undertake collection by centralized offset on each claim which is liquidated or certain in amount in accordance with the guidance and standards in 31 CFR parts 900-904 and 5 U.S.C. 5514.
 - (2) This section does not apply to those debts described in 31 CFR 901.3(a)(2).
 - (3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.
 - (4) Generally, administrative offset of payments under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Government's right to collect the claim or debt first accrued.
- (b) **Mandatory centralized offset.**
 - (1) The NLRB is required to refer past due legally enforceable, nontax debts that are over 180 days delinquent to the Department of the Treasury for collection by centralized administrative offset. A debt is legally enforceable if there has been a final determination by the NLRB that the debt, in the amount stated, is due and there are no legal bars to collection action. Debts under this section will be referred and collected pursuant to procedures in 31 CFR 901.3(b).
- (c) **NLRB administrative offset.** The NLRB, in order to refer a delinquent debt to the Department of the Treasury for administrative offset, adopts the administrative offset procedures as prescribed by 31 CFR 901.3.
- (d) **Non-centralized administrative offset.** Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that the NLRB would conduct at its own discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Non-centralized administrative offset is used

when centralized administrative offset is not available or appropriate to collect past due legally enforceable, nontax delinquent debts. In these cases, the NLRB may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. The NLRB adopts the procedures in 31 CFR 901.3(c) so that it may request that the Department of the Treasury or any other payment authorizing agency to conduct a non-centralized administrative offset.

- (e) **Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employees Retirement System.** Upon providing OPM written certification that a debtor has been afforded the procedures provided for in this section, the NLRB will request that OPM offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801-831.1808 and the Federal Employees Retirement System (System) in accordance with regulations codified at 5 CFR 845.401-845.408. Upon receipt of a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests or becomes eligible for payments from the Fund or System. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in 29 CFR 100.614(a)(4).
- (f) **Review requirements.** For purposes of this section, whenever the NLRB is required to afford a debtor a review within the Agency, the NLRB shall provide the debtor with a reasonable opportunity for a review of the record in accordance with 31 CFR 901.3(e). The NLRB will provide the debtor with the reasonable opportunity for an oral hearing in accordance with 31 CFR 285.11(f), when the debtor requests reconsideration of the debt, and the NLRB determines that the question of the indebtedness cannot be resolved by review of the written record, for example, when the validity of the debt turns on an issue of credibility or veracity.

§ 100.615 Authorities other than offset.

- (a) **Administrative Wage Garnishment.** The NLRB is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This section adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). The NLRB may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments.
- (b) This section does not apply to Federal salary offset, the process by which the NLRB collects debts from the salaries of Federal employees.

§ 100.616 Payment collection.

- (a) The NLRB shall make every effort to collect a claim in full before it becomes delinquent, but will consider arranging for payment in regular installments consistent with 31 CFR 901.8, if the debtor furnishes satisfactory evidence that he is unable to pay the debt in one lump sum. Except for a claim described in 5 U.S.C. 5514, all installment payment arrangements must be in writing and require the payment of interest, penalties, and other administrative costs. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.
- (b) If a debt is paid in one lump sum after it becomes delinquent, the NLRB shall impose charges for interest, penalties, and administrative costs as specified in 31 CFR 901.9.
- (c) Payment of a debt is made by check, electronic funds transfer, draft, or money order payable to the National Labor Relations Board. Payment should be made to the National Labor Relations Board, Finance Branch, 1099 14th Street NW., Washington, DC 20570, unless payment is—

- (1) Made pursuant to arrangements with the Department of Justice;
- (2) Ordered by a Court of the United States; or
- (3) Otherwise directed in any other part of this chapter.

§ 100.617 Interest, penalties, and administrative costs.

- (a) Pursuant to 31 U.S.C. 3717, the NLRB shall assess interest, penalties, and administrative costs on debts owed to the United States Government. Interest, penalties, and administrative costs will be assessed in accordance with the provisions contained in 31 CFR 901.9.
- (b) The NLRB shall waive collection of interest on a debt or any portion of the debt which is paid in full within 30 days after the date on which the interest began to accrue.
- (c) The NLRB may waive interest during a period a disputed debt is under investigation or review by the NLRB. However, this additional waiver is not automatic and must be requested before the expiration of the initial 30-day waiver period. The NLRB may grant the additional waiver only if it finds merit in the explanation the debtor has submitted.
- (d) The NLRB may waive collection of interest, penalties, and administrative costs if it finds that one or more of the following conditions exist:
 - (1) The debtor is unable to pay any significant sum toward the debt within a reasonable period of time;
 - (2) Collection of interest, penalties, and administrative costs will jeopardize collection of the principal of the debt;
 - (3) The NLRB is unable to enforce collection in full within a reasonable period of time by enforced collection proceedings; or
 - (4) Collection is not in the best interest of the United States, including when an administrative offset or installment agreement is in effect.
- (e) The NLRB is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

§ 100.618 Bankruptcy claims.

When the NLRB learns that a bankruptcy petition has been filed by a debtor, before proceeding with further collection action, the NLRB will immediately seek legal advice from the NLRB's Office of Special Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. After seeking legal advice from the NLRB's Office of Special Counsel, the NLRB will take any necessary action in accordance with the provisions of 31 CFR 901.2(h).

§ 100.619 When a debt may be compromised.

The NLRB may compromise a debt not in excess of the monetary limitation in accordance with 31 CFR part 902 if it has not been referred to the Department of Justice for litigation.

§ 100.620 Finality of a compromise.

An offer of compromise must be in writing and signed by the debtor. An offer of compromise which is accepted by the NLRB is final and conclusive on the debtor and on all officials, agencies, and courts of the United States, unless obtained by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 100.621 When collection action may be terminated or suspended.

The NLRB may suspend or terminate collection action on a claim not in excess of the monetary limitation of \$100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any, in accordance with the standards and reasons set forth in 31 CFR part 903.

§ 100.622 Termination of collection action.

Before terminating collection activity, the NLRB will have pursued all appropriate means of collection and determined, based upon results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the NLRB from retaining a record of the account for the purposes stated in 31 CFR 903.3(b) and (c).

§ 100.623 Exception to termination.

If a debt meets the exceptions described in 31 CFR 903.4, the NLRB may refer it for litigation even though termination of collection activity may otherwise be appropriate.

§ 100.624 Discharge of indebtedness; reporting requirements.

- (a) Before discharging a delinquent debt (also referred to as close-out of a debt), the NLRB shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When the NLRB determines that it will discharge a debt, it will do so in accordance with the provisions of 31 CFR 903.5.

- (b) [Reserved]

§ 100.625 Referral of a claim to the Department of Justice.

The NLRB shall promptly refer debts that are subject to aggressive collection activity and that cannot be compromised, or debts on which collection activity cannot be suspended or terminated, to the Department of Justice for litigation. Debts shall be referred as early as possible, consistent with the standards contained in 31 CFR parts 900-904 and, in any event, well within the period for initiating timely lawsuits against the debtors. The NLRB will make every effort to refer delinquent debts to the Department of Justice within one year of the date such debts became delinquent.