

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 236

Grant programs-housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 236 as follows:

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1, and 1735d; 42 U.S.C. 3535(d).

Subparts A through D—[Removed and Reserved]

■ 2. Remove and reserve subparts A through D, consisting of §§ 236.1 through 236.765.

Julia Gordon,

Assistant Secretary for Housing—Federal Housing Commission.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

RIN 3046–AB09

Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under Section 304 of the Government Employee Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is amending its existing regulations by which State and local government employees who were previously exempt from coverage under title VII of the Civil Rights Act of 1964 (title VII) may bring claims of employment discrimination pursuant to the Government Employee Rights Act of 1991 (GERA). The amendments explicitly provide for digital transmission of documents, update the regulation based upon the text of other regulations or statutes, and make a number of editorial revisions to improve clarity and correct errors.

DATES: This final rule is effective on July 5, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On May 19, 2023, the EEOC published a notice of proposed rulemaking (NPRM) in the **Federal Register** (88 FR 32154) seeking public comment on proposed revisions to the EEOC’s procedural regulations under section 304 of GERA, which extends protections against employment discrimination based on race, color, religion, sex, national origin, age, and disability to previously exempt State and local government employees. 42 U.S.C. 2000e–16c. The revisions are intended to serve several purposes. First, recognizing that the EEOC has expanded its use of technology in charge and complaint processing and has implemented a digital system for charges and complaints of discrimination filed with the EEOC, the revisions explicitly provide for digital transmission of documents in the GERA complaint process. Second, they include a few changes to citations to other regulations or statutes, as well as cross-references to sections within part 1603. Third, they serve to correct errors and make other clarifying changes. Public comments were due in response to the NPRM on or before July 18, 2023.

The EEOC received two comments in response to the NPRM, one anonymous and another from an advocacy organization. The comments are available for review at the Federal eRulemaking Portal at <https://www.regulations.gov>. The anonymous comment was supportive of the proposed changes, while the comment from the organization took issue with the proposal in the NPRM to remove paragraphs (b) and (c) of § 1603.107. The NPRM explained that the agency proposed to remove the two paragraphs in an effort to further standardize the EEOC’s various procedural regulations, noting that similar language had been previously removed from 29 CFR part 1601 in part for the same reason. The comment argued that because the GERA complaint procedure differs from the administrative charge procedures under title VII and other statutes enforced by the agency, the agency’s stated rationale for removal of these two paragraphs was inappropriate. The comment notes that under the title VII administrative charge process, the EEOC investigates and

either dismisses the charge with a determination that there is no cause to believe discrimination occurred or finds cause and endeavors to resolve the charge through conciliation and possibly litigation. In the case of a dismissal or a cause finding where the EEOC declines to litigate, the aggrieved party receives the right to file a private civil action. The comment then characterizes the GERA administrative complaint process, by contrast, as assigning the complaint to an administrative law judge for resolution without the opportunity for the EEOC to file suit or issue the complainant a right to private suit.

While the comment correctly notes that a portion of the administrative GERA process is different from the charge filing process under title VII and other statutes, it ignores that prior to assignment to an administrative law judge, the EEOC may conduct an investigation into the complaint, and that investigative phase of the GERA administrative process is largely based upon the administrative process for charges in 29 CFR part 1601 for other statutes enforced by the agency. Before referring a GERA complaint to an administrative law judge, EEOC staff “may conduct [an] investigation using an exchange of letters, interrogatories, fact-finding conferences, interviews, on-site visits or other fact-finding methods that address the matters at issue.” 29 CFR 1603.109(a). EEOC staff also are authorized to issue administrative subpoenas using the procedures in 29 CFR part 1601. Due to the similarity of the investigative practices utilized in GERA complaints and charges under title VII and other statutes, standardizing the procedural regulations covering these investigative practices will promote consistency and efficiency, and will minimize confusion among the EEOC personnel charged with conducting these investigations. Therefore, upon careful consideration of the comment from the advocacy organization, the EEOC declines to make changes to its proposed revisions.

While the Commission is not making changes to the proposed revisions based upon the public comments received in response to the NPRM, the final rule does reflect a terminology update. After publication of the NPRM on May 19, 2023, and after the Pregnant Workers Fairness Act (PWFA) became effective on June 27, 2023, the EEOC on February 14, 2024, published an interim final rule in the **Federal Register** (89 FR 11167) amending the agency’s procedural regulations, including those in part 1603, to add references to the PWFA and its terms. One such reference was

added to § 1603.102(a), and this final rule reflects that amendment.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a “significant regulatory action” under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This rule contains no new information collection requirements for the public, and therefore it will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect any small business entities. The regulation affects only certain employees of State or local governments. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. To the extent that it affects small governments by allowing for digital transmission of documents, it will save resources of those entities. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This regulation is a rule subject to the Congressional Review Act (CRA), but not a “major” rule that cannot take effect until 60 days after it is published in the **Federal Register**. Therefore, the EEOC will submit this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule.

List of Subjects in 29 CFR Part 1603

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations, Investigations, State and local governments.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends 29 CFR part 1603 as follows:

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 304 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

■ 1. The authority citation for part 1603 is revised to read as follows:

Authority: 42 U.S.C. 2000e–12 and–16c; 42 U.S.C. 2000ff–6(b); 42 U.S.C. 2000gg–2(d).

■ 2. Amend § 1603.102 by:

■ a. Revising paragraphs (a), (b), (c) introductory text, (c)(1) and (2), (c)(4), and the last sentence of paragraph (d); and

■ b. In paragraph (e), in the first sentence, removing the commas.

The revisions read as follows:

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race; color; religion; sex; national origin; age; disability; genetic information; or pregnancy, childbirth, or related medical conditions; or retaliated against for opposing any practice made unlawful by Federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under those Federal laws, may file a complaint not later than 180 days after the occurrence of the alleged discrimination or retaliation.

(b) *Where to file a complaint.* A complaint may be filed using the Commission’s designated digital systems, in person, by facsimile, or by mail to any Commission office or with any designated agent or representative of the Commission. The addresses of the Commission’s offices may be found at www.eeoc.gov.

(c) *Contents of a complaint.* A complaint shall be in writing and signed and shall be verified as defined in § 1601.3(a). In addition, each complaint should contain the following:

- (1) The full name and contact information of the person making the complaint;
- (2) The full name and contact information of the person, governmental

entity, or political subdivision against whom the complaint is made, if known (hereinafter referred to as the respondent);

* * * * *

(4) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local Fair Employment Practices (FEP) agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(d) * * * A complaint that has been amended after it was referred (see § 1603.103) shall not be again referred to the appropriate State or local FEP agency.

* * * * *

§ 1603.103 [Amended]

■ 3. Amend § 1603.103(b) by removing the comma.

■ 4. Revise § 1603.106 to read as follows:

§ 1603.106 Computation of time generally and for timely receipt by the Commission.

(a)(1) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(2) The first day counted shall be the day after the event from which the time period begins to run, and the last day of the period shall be included unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

(3) All time limits in this part are subject to waiver, estoppel, and equitable tolling.

(b) Documents submitted to the Commission are deemed timely received as follows:

(1) A document submitted by digital transmission, by facsimile not exceeding 20 pages, or by personal delivery or commercial delivery service shall be deemed timely if it is received before the expiration of the applicable filing period. A document submitted by digital means shall be deemed received on the date the EEOC's designated digital system records the upload.

(2) A document submitted by mail shall be deemed timely if it is postmarked before the expiration of the applicable filing period or, in the absence of a legible postmark, if it is received within 5 days of the expiration of the applicable filing period.

(c) For the purposes of this part, the terms *file*, *serve*, *receive*, *issue*, *transmit*, *send*, and any other word forms of these terms, such as *filing* or *servicing*, when used to describe transmission of

documents, shall include all forms of digital transmission.

■ 5. Revise § 1603.107 to read as follows:

§ 1603.107 Dismissals of complaints.

(a) Where a complaint is not timely filed or, except as described in § 1603.102(e), fails to state a claim under this part, the Commission shall dismiss the complaint.

(b) Written notice of dismissal pursuant to paragraph (a) of this section shall be issued to the complainant and the respondent. The Commission hereby delegates authority to dismiss complaints to the Director, Office of Field Programs or the Director's designees, and to District Directors or their designees.

(c) A complainant who is dissatisfied with a dismissal issued pursuant to this section may appeal to the Commission in accordance with the procedures in subpart C of this part.

§ 1603.108 [Amended]

■ 6. Amend § 1603.108 by:

■ a. In paragraph (c), adding a comma after the words "employees of the Commission"; and

■ b. In paragraph (d), removing the number "584" and adding in its place the number "574".

§ 1603.109 [Amended]

■ 7. Amend § 1603.109 by:

■ a. In paragraph (a), adding the word "an" before the word "investigation" and adding a comma after the word "visits"; and

■ b. In paragraph (b), in the first sentence, adding a comma after the words "the production of evidence".

§ 1603.201 [Amended]

■ 8. Amend § 1603.201 by:

■ a. In paragraph (a), adding a comma after the words "of this section or";

■ b. In paragraph (c), removing the words "representatives or witnesses" and adding in their place the words "representatives, and their witnesses".

■ 9. Amend § 1603.202 by, in paragraph (a), adding a comma after the word "place" and revising paragraph (b) to read as follows:

§ 1603.202 Administrative law judge.

* * * * *

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge either prior to the hearing or within 2 days after the scheduled hearing and presenting arguments as to why the

party or the party's representative could not appear; and

* * * * *

■ 10. Revise § 1603.203 to read as follows:

§ 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hearing or issuing a decision on the record as made, or both. At any time administrative law judges deem themselves disqualified, they may withdraw from an adjudication.

(b) Prior to issuance of a decision on the complaint, any party may move that the administrative law judge withdraw on the grounds of personal bias or other disqualification by filing with the administrative law judge an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal promptly upon discovery of the alleged facts. The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion was filed promptly and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

■ 11. Amend § 1603.204 by revising the last sentence of paragraph (a) and paragraphs (b) and (d) to read as follows:

§ 1603.204 Ex parte communications.

(a) * * * Communications between the administrative law judge or Commission personnel and one party concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission, and other purely procedural questions are permitted.

(b) "Decision-making personnel of the Commission" includes members of the Commission and their staffs as well as personnel in the Office of Federal Operations but does not include investigators and intake staff.

* * * * *

(d) Where it appears that a party has engaged in prohibited ex parte communications, that party may be required to show cause why, in the interest of justice, the party's claim or defense should not be dismissed, denied, or otherwise adversely affected.

§ 1603.205 [Amended]

■ 12. Amend § 1603.205(b) by removing the comma after the words "in the adjudication".

§ 1603.206 [Amended]

- 13. Amend § 1603.206 by:
 - a. In paragraph (a), in the first sentence:
 - i. Removing the words “his or her” and adding in their place the words “the administrative law judge’s”;
 - ii. Removing the comma after the words “common parties”; and
 - iii. Adding the word “common” before the word “factual”; and
 - b. In paragraph (b), removing the words “his or her” and adding in their place the words “the administrative law judge’s” and adding a comma after the word “claims”.

§ 1603.207 [Amended]

- 14. Amend § 1603.207 by:
 - a. In paragraph (b), adding the word “relevant” before the words “facts or reasons”; and
 - b. In paragraph (c), removing the text “15 days after the filing” and adding in its place the text “10 business days after service”.

§ 1603.208 [Amended]

- 15. Amend § 1603.208 by:
 - a. In paragraph (b):
 - i. In the first sentence, removing the text “ten (10)” and adding in its place the number “10”; and
 - ii. In the last sentence, removing the words “judge, in his or her discretion, orders” and adding in their place the words “judge exercises discretion to order”; and
 - b. In paragraph (c):
 - i. In the third sentence, adding the words “or other digital means” after the word “telephone”;
 - ii. In the last sentence, removing the text “five (5)” and adding in its place the number “5” and adding a comma after the word “vacate”; and
 - c. In paragraph (d), removing the words “dilatatory, repetitive or frivolous motions” and adding in their place the words “motions that are repetitive, frivolous, or intended to delay the proceedings”.
- 16. Revise § 1603.209 to read as follows:

§ 1603.209 Filing and service.

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief, or other document shall be filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties and stating the date and manner of service. Digitally submitted documents may be electronically signed. All

documents presented in hard copy shall be on standard size (8½ x 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery, including, at the discretion of the administrative law judge, by facsimile, digital transmission, or other means. The administrative law judge may exercise discretion to limit the number of pages that may be filed or served by facsimile. Service shall be made on a party’s representative or, if not represented, on the party.

(c) Every document shall contain a caption including the parties’ names, the complaint number or docket number assigned to the matter, a designation of the type of filing (e.g., motion, brief, etc.), and the filing person’s signature and contact information.

§ 1603.210 [Amended]

- 17. Amend § 1603.210(b) by adding a comma after the word “admission”.

§ 1603.211 [Amended]

- 18. Amend § 1603.211 by:
 - a. In paragraph (a), in the last sentence, adding the word “state” before the words “the date and time”; and
 - b. In paragraph (b), in the second sentence, adding the word “also” before the words “be served upon”.

§ 1603.213 [Amended]

- 19. Amend § 1603.213 by:
 - a. In paragraph (a) introductory text, adding the words “either independently or” before the words “upon motion of a party”, and removing the words “or upon his or her own motion”;
 - b. In paragraph (a)(2), removing the word “ruling” and adding in its place the word “appeal”, and removing the word “or” and adding in its place the word “and”;
 - c. In paragraph (a)(3), removing the word “ruling” and adding in its place the word “appeal”;
 - d. In paragraph (b) introductory text, removing the text “ten (10)” and adding in its place the number “10”; and
 - e. In paragraph (c), in the last sentence, removing the text “, within his or her discretion,”.

§ 1603.214 [Amended]

- 20. Amend § 1603.214 by adding the word “that” before the words “the rules on hearsay”.

§ 1603.215 [Amended]

- 21. Amend § 1603.215 by:

- a. In paragraph (a), in the first sentence, removing the words “mechanically or stenographically reported” and adding in their place the words “audio or video recorded, stenographically reported, or both” and in the last sentence, removing the words “and the public”; and
- b. In paragraph (b), removing the comma after the words “upon motion” and removing the text “ten (10)” and adding in its place the number “10”.

§ 1603.217 [Amended]

- 22. Amend § 1603.217(b), in the last sentence, adding a semicolon after the word “discovery”.

§ 1603.301 [Amended]

- 23. Amend § 1603.301 by removing the citation “§ 1613.213” and adding in its place the citation “§ 1603.213”.
- 24. Amend § 1603.302 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 1603.302 Filing an appeal.

* * * * *

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, by mail to P.O. Box 77960, Washington, DC 20013, by personal delivery or commercial delivery service, by digital transmission, or by facsimile to (202) 663-7022.

(c) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

§ 1603.303 [Amended]

- 25. Amend § 1603.303 by:
 - a. In paragraph (c) introductory text, in the second sentence, adding a comma after the word “order”;
 - b. In paragraph (c)(2), adding a comma after the word “regulation”; and
 - c. In paragraph (e), removing the words “the appeal and” and removing the citation “§ 1603.209” and adding in its place the citation “§ 1603.302(b) and (c)”.

§ 1603.306 [Amended]

- 26. Amend § 1603.306 by removing the comma after the word “resides”.

For the Commission,
Charlotte A. Burrows,
Chair.

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