



U.S. DEPARTMENT OF ENERGY

OFFICE OF CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY

FREQUENTLY ASKED QUESTIONS (FAQS): EXTERNAL CIVIL RIGHTS COMPLIANCE

Purpose: These Frequently Asked Questions and the responses included below are meant to provide a form of technical assistance (TA) to recipients of federal financial assistance from the U.S. Department of Energy (Department or DOE). This document is solely intended to provide clarity regarding the interpretation of federal civil rights statutes and regulations implemented by the Department. This document does not have the force and effect of law. The enforcement of federal civil rights statutes by the Department’s Office of Civil Rights and Equal Employment Opportunity (OCR-EEO) derives from the Department’s civil rights implementing regulations at 10 C.F.R. Parts 1040 and 1042. OCR-EEO represents the interests of the Department in enforcing 10 C.F.R. Parts 1040 and 1042. Therefore, please note that OCR-EEO is not able to provide legal advice to or represent applicants, recipients, beneficiaries, or other persons who may participate in DOE federally assisted programs or activities. However, upon request, OCR-EEO may provide further technical assistance to recipients.

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QUESTIONS AND ANSWERS

Question 1: *Which federal civil rights statutes and regulations apply to a Department recipient of federal financial assistance?*

Answer: Every Department recipient of federal financial assistance is required to comply with federal civil rights statutes and Department civil rights implementing regulations,¹ including:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Title VI), and DOE Title VI implementing regulations at 10 C.F.R. Part 1040, Subpart B, which prohibit discrimination on the basis of race, color, and national origin.
- Section 16 of the Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275 (Section 16) and DOE Section 16 implementing regulations at 10 C.F.R. Part 1040, Subpart B, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance subject to Section 16. The coverage of employment practices under Section 16 is explained in 10 C.F.R. Part 1040, Subpart B at § 1040.14.
- Section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438 (Section 401) and DOE Section 401 implementing regulations at 10 C.F.R. Part 1040, Subpart B, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance subject to Section 401. The coverage of employment practices under Section 401 is explained in 10 C.F.R. Part 1040, Subpart B at § 1040.14.
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and DOE Section 504 implementing regulations at 10 C.F.R. Part 1040, Subpart D, which prohibit discrimination on the basis of disability.
- Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and DOE Age Discrimination Act implementing regulations at 10 C.F.R. Part 1040, Subpart E, which prohibit discrimination on the basis of age.
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), and DOE Title IX implementing regulations at 10 C.F.R. Part 1042, which prohibit discrimination on the

¹ In addition, pursuant to DOE regulation 10 C.F.R. Part 1040, Subpart A at § 1040.4, an applicant for federal financial assistance to which this part applies is required to submit an assurance in a manner specified by the Department that the program or activity will be operated in compliance with DOE civil rights implementing regulations.

basis of sex in any academic, extracurricular, research, occupational training, or other education program or activity, whether or not such program or activity is offered or sponsored by an educational institution expressly defined in 10 C.F.R. Part 1042.

Question 2: *Must a Department recipient designate an employee to coordinate its efforts to comply with federal civil rights statutes and regulations?*

Answer: Yes. Every Department recipient of federal financial assistance must designate at least one employee who is responsible for coordinating and carrying out its efforts to comply with all applicable Department civil rights implementing regulations at 10 C.F.R. Parts 1040 and 1042. Pursuant to 10 C.F.R. Part 1040, Subpart A at § 1040.5(a) and 10 C.F.R. Part 1042, Subpart A at § 1042.135(a), every Department recipient must also publish the name, office address, and contact information of its designated employee(s). Under 10 C.F.R. Part 1042, Subpart A at § 1042.135(a), the responsibilities of a recipient's designated employee(s) include, among other responsibilities, investigating any complaint communicated to the recipient alleging its noncompliance with the Department's Title IX implementing regulations.

When designating a responsible employee, a recipient may wish to consider the competencies and skills needed to effectively implement its nondiscrimination policies and complaint procedures.

Question 3: *Must a Department recipient announce that it operates its programs and activities subject to federal civil rights statutes and regulations?*

Answer: Yes. Pursuant to 10 C.F.R. Part 1040, Subpart A at § 1040.5(b), every recipient of DOE federal financial assistance must prominently display, in a reasonable number of places (whether physical or electronic), posters or equivalent material which:

- State that the recipient operates its programs and activities subject to the nondiscrimination provisions of the Department's civil rights implementing regulations at 10 C.F.R. Parts 1040 and 1042.
- Summarize the requirements of the Department's civil rights implementing regulations at 10 C.F.R. Parts 1040 and 1042.
- Note that additional information related to the Department's civil rights implementing regulations may be obtained from the recipient and the Department.
- Briefly explain the procedures for filing a complaint related to Title VI, Section 504, the Age Discrimination Act, and Title IX (if applicable, as it relates to an education program or activity).
- For DOE recipients to whom Title IX applies:² The relevant posters or equivalent materials should also state that the Title IX requirement not to discriminate in education programs and activities extends to employment and admission (with certain exceptions³), and that inquiries concerning the application of Title IX may be referred to the employee designated to coordinate and carry out the recipient's compliance efforts.

² Pursuant to Department regulation 10 C.F.R. Part 1042, Subpart A at § 1042.100, Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in 10 C.F.R. Part 1042.

³ See 10 C.F.R. Part 1042, Subpart C at § 1042.300.

In addition to posters, any handbooks, manuals, pamphlets, and other materials that the recipient ordinarily distributes to the public to describe its federally assisted programs and activities should briefly explain the recipient's complaint procedures related to Title VI, Section 504, the Age Discrimination Act, and Title IX (if applicable), as well as the rights and requirements of program participation.

Question 4: *Must a Department recipient provide notice that it does not discriminate on the basis of race, color, national origin, sex (where applicable), disability, or age?*

Answer: Yes. Pursuant to 10 C.F.R. Part 1040, Subpart A at § 1040.6 and 10 C.F.R. Part 1042, Subpart A at § 1042.140, every Department recipient of federal financial assistance must take initial *and* continuing steps to notify its program participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of race, color, national origin, sex (where applicable), disability, or age. This notice must also state, where appropriate, that the recipient does not discriminate in admission or access to, and treatment of, or employment in its programs or activities.^{4, 5}

Additionally, the notice should inform employees of their rights under 10 C.F.R. Parts 1040 and 1042, and identify the employee designated by the recipient to coordinate and carry out the recipient's responsibilities to comply with such Parts.

Where the Title IX regulations at 10 C.F.R. Part 1042 apply, the recipient's notice must also state that the requirement not to discriminate in education programs and activities extends to employment and admission unless otherwise excepted, and that inquiries concerning the application of Title IX may be referred to the recipient's designated employee.

Methods by which a recipient may distribute its initial and continuing notices of nondiscrimination include postings (physical and/or electronic), publications in newspapers and magazines, placement of notices in the recipient's publications (whether physical or electronic), and through distribution of memoranda or other written communications.

Question 5: *Must a Department recipient adopt procedures for the filing of complaints or grievances alleging any action that would be prohibited by Department civil rights implementing regulations?*

Answer: Yes. For Department recipients that are unfamiliar with the statutory and regulatory requirements of Title VI, Section 504, the Age Discrimination Act, or Title IX (as applicable), it may seem challenging to develop and implement complaint procedures that satisfy 10 C.F.R. Part

⁴ The nondiscrimination prohibitions of 10 C.F.R. Part 1040, Subpart B, prohibiting discrimination on the basis of race, color, and national origin, also extend to employment where a primary purpose of federal financial assistance is to provide employment, or when the delivery of services is affected by the recipient's employment practices. Employment coverage may be even broader in scope when Section 16, Section 401, or Title IX are applicable. *See* 10 C.F.R. Part 1040, Subpart A at § 1040.1.

⁵ As explained by Department regulation 10 C.F.R. Part 1040, Subpart A at § 1040.1, under Section 504, all grantee and subgrantee employment practices are covered, regardless of the purpose of the program, in connection with any program or activity receiving federal financial assistance from the Department.

1040, Subpart A at § 1040.5(b) and 10 C.F.R. Part 1042, Subpart A at § 1042.135(b). Consequently, it may be helpful to consider that:

- One of the first steps in grievance procedure development is the identification of contextual factors (*e.g.*, existing organizational policies, state laws, contractual arrangements, etc.) that may be implicated by or inconsistent with the recipient's obligation to comply with 10 C.F.R. Parts 1040 and 1042.
- After identifying contextual factors, the structural components of a complaint procedure can be more easily assembled. Structural components typically serve a three-fold function:
 - 1) Delineating formalized steps and instructions on how a person may file a complaint concerning a recipient program or activity related to Title VI, Section 504, the Age Discrimination Act, and Title IX (if applicable), without fear of retaliation;
 - 2) Providing a fair and prompt process by which to determine whether noncompliance with Department regulations has occurred in a recipient program or activity, and if so;
 - 3) Implementing a fair and prompt process for correcting all noncompliant policies or practices, and remedying any discriminatory effects resulting therefrom that may have adversely affected the complainant or other aggrieved persons.
- Given these structural components, complaint procedures often include the following elements in some form:⁶
 - A definition of the types of information that must be included in a complaint.
 - A definition of who may file a complaint.
 - Stipulation of the time limits for initiation of the complaint process.
 - The manner in which the complaint process must be initiated, including notification of parties and other potentially involved persons (*i.e.*, complainant, respondent, witnesses, etc.)
 - The roles and responsibilities of persons involved in complaint processing.
 - The number and level of steps involved in complaint processing.
 - The requirements of each step in complaint processing.
 - Specification of any assistance available to each party at each step in complaint processing.
 - Timelines governing each step in complaint processing.
 - Rights and responsibilities of parties and other involved persons during complaint processing.
 - Types of interim and ultimate remedial measures available during and after complaint processing.
 - Protections from harassment and retaliation during and after complaint processing.

Question 6: *Are there circumstances in which a Department recipient must take reasonable steps to provide information about its programs and activities in languages other than English?*

Answer: Yes. In 2004, the Department published Policy Guidance on Nondiscrimination in Federally Assisted Programs, Enforcement of Title VI of the Civil Rights Act of 1964 and the Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency (LEP).⁷

⁶ Complaint procedure elements are offered as guidance and not intended to comprise an exhaustive list.

⁷<https://www.federalregister.gov/documents/2004/08/16/04-18636/nondiscrimination-in-federally-assisted-programs-enforcement-of-title-vi-of-the-civil-rights-act-of>

This Policy Guidance clarifies the legal requirements of Title VI by providing a description of the factors that every recipient should consider in fulfilling its responsibilities to persons who may be limited in their ability to read, write, speak, or understand English. This Policy Guidance is not a regulation and does not create any legally binding or enforceable obligations. Rather, it provides an analytical framework which may be used to determine how best to comply with the Title VI prohibitions against national origin discrimination.

This Policy Guidance also sets forth the criteria that the Department applies when determining whether its recipients are in compliance with Department regulations at 10 C.F.R. Part 1040. While designed to be a flexible and fact-dependent framework, the starting point is an individualized analysis that balances the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's programs; (2) the frequency with which LEP persons come in contact with the recipient's programs; (3) the nature and importance of the activities or services provided by the recipient's programs to people's lives; and (4) the language assistance resources available to the recipient and associated service delivery costs. The Department's Policy Guidance provides additional information and examples to assist in the analysis of each of these factors.

Question 7: *Must a Department recipient operate its programs and activities so as to afford qualified persons with disabilities 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?*

Answer: Yes. Pursuant to 10 C.F.R. Part 1040, Subpart D, a recipient may not provide different or separate aid, benefits, or services to disabled persons than it provides to others, unless such action is necessary to ensure that qualified disabled persons receive aids, benefits, or services that are as effective as those provided to others.

Additionally, a recipient must take appropriate steps to ensure that it can effectively communicate (whether orally, in writing, or electronically via its website) with disabled persons. Although Department regulations relating to effective communication do not set forth explicit standards, universally accepted guidance regarding how to ensure website accessibility for persons with disabilities includes the Web Content Accessibility Guidelines (WCAG) developed by the World Wide Web Consortium (W3C),⁸ as well as the Section 508 Standards⁹ used by the Federal Government for its own websites.

Importantly, affording persons an equal opportunity to participate in federally assisted programs and activities may necessitate that a recipient make reasonable accommodation to the known physical or mental limitations of otherwise qualified disabled persons, unless the recipient can demonstrate that such accommodation would impose an undue hardship on the operation of its programs or activities. In determining whether an accommodation would impose an undue hardship, factors to be considered include: (1) the overall size of the recipient's programs or activities with respect to its number of employees, number and type of facilities, and size of its

⁸ See <https://www.w3.org/WAI/fundamentals/accessibility-intro/>

⁹ See <https://www.access-board.gov/ict/>

budget; (2) the type of the recipient's operation, including the composition and structure of its workforce; and (3) the nature and cost of the accommodation needed.

Question 8: *Must a Department recipient operate its programs and activities so that its facility or part of its facility is readily accessible to and usable by persons with disabilities?*

Answer: Yes. Although a Department recipient of federal financial assistance is not required to make each of its facilities accessible and usable by disabled persons, it must operate any program or activity that is subject to Section 504 so that each part of its existing facility, when viewed in its entirety, is readily accessible and usable by disabled persons.¹⁰

A recipient may comply with this requirement through such means as redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aids to beneficiaries; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities; and construction of new facilities.¹¹

While a recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance, in choosing among available methods for meeting accessibility requirements, a recipient must give priority to those methods that serve disabled persons in the most integrated setting appropriate.¹²

Question 9: *Do Department regulations prohibit sexual harassment in the education programs and activities of a Department recipient?*

Answer: Yes. Department regulations implementing Title IX are interpreted to extend to prohibitions on sexual harassment.¹³ Sexual harassment is broadly defined to include: (1) quid pro quo harassment (*i.e.*, where a recipient employee conditions the provision of a program aid, benefit, or service on a person's participation in unwelcome sexual conduct); (2) unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to an education program or activity;¹⁴ and (3) sexual assault, dating violence, domestic violence, or stalking.¹⁵

¹⁰ See 10 C.F.R. Part 1040, Subpart D at § 1040.72(a).

¹¹ Pursuant to 10 C.F.R. Part 1040, Subpart D at § 1040.73(c)(1), as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (referenced in Appendix A to 41 C.F.R. Subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

¹² See 10 C.F.R. Part 1040, Subpart D at § 1040.72(b).

¹³ See *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 286, 118 S. Ct. 1989, 141 L.Ed.2d 277 (1998); *Davis v. Monroe County Board of Education*, 526 U.S. 629, 648, 119 S. Ct. 1661, 1674, 143 L.Ed.2d 839 (1999).

¹⁴ This definition of sexual harassment aligns with the Title IX regulations currently enforced by the U.S. Department of Education. See 34 C.F.R. Part 106, Subpart D at § 106.30(a).

A recipient must adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging discrimination in its education programs or activities on the basis of sex (including sexual harassment) that would be prohibited by the Department’s Title IX regulations.¹⁶

Importantly, allegedly harassing conduct occurring in a public education program or activity may implicate rights to free speech and expression guaranteed by the First Amendment to the U.S. Constitution. Consequently, although verbal harassment can take many forms, in order to constitute unlawful harassment in violation of federal civil rights statutes, such as Title IX, it is not enough that speech or expression is deemed personally offensive. Rather, it must create a hostile environment. A hostile environment is one in which harassment is so severe, pervasive, and objectively offensive that it deprives the victim of access to educational opportunities or benefits.¹⁷ Consistent with U.S. Supreme Court precedent,¹⁸ as well as the decisions of other Courts¹⁹ and federal agencies,²⁰ the Department’s federal civil rights regulations at 10 C.F.R. Part 1040 and 10 C.F.R. Part 1042 will *not* be interpreted by the Department so as to infringe upon rights protected under the First Amendment, or to require a Department recipient to enact or enforce policies that punish the exercise of such rights. Furthermore, any private recipient of the Department’s Federal financial assistance that chooses to restrict or limit free speech or expression beyond the First Amendment principles that are applicable to government actors, does so on its own accord, and not due to any compliance requirement of 10 C.F.R. Parts 1040 or 1042.

Question 10: *Must a Department recipient comply with federal civil rights statutes and implementing Department regulations when it is advancing a Diversity, Equity, and Inclusion (DEI) Plan?*

Answer: Yes. Notwithstanding the goals that may inspire a DEI Plan, Department regulations regarding affirmative action stipulate that, in the absence of a finding of discrimination on the basis of race, color, national origin, sex (where applicable), disability, or age in any program or activity, a recipient may continue to encourage participation by all persons *regardless* of race, color, national origin, sex, disability, or age.²¹ Consequently, if a recipient expressly, or with purpose

¹⁵ Sexual assault is defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act), 20 U.S.C. § 1092 (f)(6)(A)(v). Dating violence is defined by the Violence Against Women Act of 1994 (VAWA), as amended, 34 U.S.C. § 12291(a)(10). Domestic violence is defined in 34 U.S.C. § 12291(a)(8). Stalking is defined in 34 U.S.C. § 12291(a)(30).

¹⁶ See 10 C.F.R. Part 1042, Subpart A at § 1042.135(b).

¹⁷ *Davis v. Monroe County Board of Education*, 526 U.S. 629, 648, 119 S. Ct. 1661, 1674, 143 L.Ed.2d 839 (1999).

¹⁸ See, e.g., *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); *University of Wisconsin v. Southworth*, 529 U.S. 217 (2000); *Christian Legal Society of the University of California, Hastings College of the Law v. Martinez*, 130 S. Ct. 2971 (2010).

¹⁹ See, e.g., *Speech First, Inc. v. Cartwright*, 32 F.4th 1110 (2022).

²⁰ See, e.g., the U.S. Department of Education re: the First Amendment at <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>

and intent, imposes a benefit or burden on one class of persons (based on their race or sex, for example), to the exclusion of another class of persons (based on their race or sex), it may be found to have imposed a suspect classification that is subject to heightened scrutiny. This is so because federal civil rights statutes are interpreted to be coextensive with the Equal Protections embodied in the Fifth and Fourteenth Amendments to the U.S. Constitution. Hence, classifications that are based on race are subject to strict scrutiny,²² while classifications that are based on sex are subject to intermediate scrutiny.²³

Strict scrutiny places the burden on the recipient to prove that: (1) its race-based classification furthers a compelling interest; (2) such classification is demonstrably effective in advancing that compelling interest; and (3) its use of a race-based classification is narrowly tailored to further that compelling interest (*i.e.*, is the least burdensome of all available alternatives). Intermediate scrutiny places the burden on the recipient to prove that: (1) it is acting to further an important objective; and (2) its use of a sex-based classification is substantially related to this important objective.

²¹ See 10 C.F.R. Part 1040, Subpart A at § 1040.7(b).

²² See, *e.g.*, *Wygant v. Jackson Board of Education*, 476 U.S. 267, 313 (1986).

²³ See *Mississippi University for Women v. Hogan*, 458 US 718 (1982); *United States v. Virginia*, 518 U.S. 515 (1996).