

**U.S. Department of Energy
Office of Civil Rights and Diversity
Civil Rights Division**

**Title IX Complaint
Procedures Manual**



**U.S. DEPARTMENT OF
ENERGY**

Vers.1, Published 11/12/20

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Section 1: Introduction

101. Statement of Purpose

Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. Section 1681 *et seq.*, prohibits sex-based discrimination and harassment (including sexual harassment) in all educational programs and activities of institutions that receive Federal financial assistance. The Department of Energy (the Department or DOE) has promulgated regulations found at 10 C.F.R. Parts 1040 and 1042, which implement Title IX.

Title IX and DOE Title IX implementing regulations also make it unlawful for a recipient to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or DOE Title IX implementing regulations, or because a complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to Title IX or DOE Title IX implementing regulations.

This Manual sets forth the Department's internal procedures for receiving and processing a complaint of sex-based discrimination and/or harassment (including sexual harassment) against a recipient of DOE Federal financial assistance (recipient) pursuant to Title IX and DOE Title IX implementing regulations.

102. DOE Office Responsible for Title IX Enforcement and Compliance Actions

The Director, Office of Economic Impact and Diversity (ED), is responsible for DOE Title IX enforcement and compliance actions. The Civil Rights Division (OCR) within the Office of Economic Impact and Diversity has been designated to receive and process Title IX complaints.

Section 2: Complaint Initiation

201. How to File a Title IX Complaint with DOE

An individual¹ may file a complaint of discrimination and/or harassment (including sexual harassment) against a recipient of DOE Federal financial assistance with the DOE Civil Rights Division pursuant to Title IX and DOE Title IX implementing regulations.

¹ The Department will refer to the aggrieved individual as "complainant." If a complainant informs the Department that he/she/they are a person with Limited English Proficiency (LEP), have a disability which interferes with his/her/their ability to communicate in writing, or are otherwise unable to communicate in writing, then OCR will provide guidance regarding how the complainant can communicate his/her/their complaint to the Department.

A Title IX complaint may be filed by mail, email, fax, or in-person.²

A Title IX complaint may be filed by mail or in-person using the following address:

Office of Civil Rights and Diversity
U.S. Department of Energy
Room 5B-168
1000 Independence Ave., SW
Washington, DC 20585

To submit a Title IX complaint by email, please use the following email address:
civilrights@hq.doe.gov.

To submit a complaint by fax, please use the following fax number: 202-586-1009.

202. Complaint Information Requirements

A complaint must contain the following information:

- Your name, address, and telephone number;
- The name and address of the agency, institution, or department you believe discriminated against you;
- How, why, and when you believe you were discriminated against based on sex, including as much information as possible about the alleged acts of discrimination, and the names of the individuals whom you allege discriminated against you, if known; and
- The names of any persons, if known, that the Civil Rights Division could contact for additional information to support or clarify your allegations.

203. Identity of Complainant

If a complaint is accepted for investigation (see Section 302 below), OCR will request that the complainant provide written consent to release his/her/their identify to the recipient for purposes of the investigation. However, in the absence of the complainant's consent to release his/her/their identity, OCR may determine that the release of the complainant's identify is necessary to address/resolve the complaint.

204. Establishing Date of Receipt and Timeliness

DOE Title IX implementing regulations state that Title IX complaints not received within 180 days of the discriminatory event will not be investigated, unless the complainant shows good cause for the delay.

² The Department notes that due to the Pandemic, there are limitations on filing a complaint in-person. At this time, the Department encourages individuals who may be interested in filing a Title IX complaint to do so via email at the email address identified in Section 201.

The date a complaint is received will serve to establish whether the complaint was timely filed and to determine the deadline for investigation, if it is accepted for processing.

If the Title IX complaint is filed by mail, the date of filing of the complaint is the date that OCR received the complaint, as it must be received within 180 days.

If the Title IX Complaint is filed by email or fax, the date of filing of the complaint is the date that OCR received the complaint by email or fax. However, if the fax or email is received after the close of business, the date of filing is the next business day.

If a Title IX complaint is filed in-person, the date of filing of the complaint is the date that the complainant hand-delivered the complaint to OCR.

205. OCR Administrative Steps upon Receipt of a Complaint

Upon receipt of a Title IX complaint, the OCR Administrative Assistant will date stamp the complaint according to the filing date method set out above.

The OCR Administrative Assistant will assign a DOE Title IX case number to the complaint and set up a case file within 48 hours of receipt of the complaint.

The OCR Administrative Assistant will log the complaint in the daily mail log, upload the complaint to the designated P drive folder, and inform the Chief, Civil Rights Division, of receipt of the complaint on the same day that the complaint is received.

The Chief, Civil Rights Division, will assign the complaint to an attorney advisor to conduct a jurisdictional and timeliness review. If jurisdiction is established, as set forth below, the attorney will be responsible for further processing the complaint pursuant to this Manual.

206. Responsibilities for Field Site Personnel

If a complainant contacts a DOE field site OCR/Equal Employment Opportunity (EEO)/Diversity and Inclusion (D&I) Office regarding a Title IX complaint, the DOE field site OCR/EEO/D&I Office shall refer the complainant to the Headquarters Civil Rights Division. If a complainant submits a Title IX complaint to a DOE field site, the DOE field site OCR/EEO/D&I Office shall transfer the complaint to the Headquarters Civil Rights Division within 48 hours of receipt.

207. Acknowledgment of Receipt of Complaint

OCR will acknowledge receipt of the complaint in writing within 15 days of receipt of the complaint.

Section 3: Jurisdictional Determination

301. Jurisdictional Analysis

OCR will review the complaint to determine whether OCR has jurisdiction to process the complaint. This determination will generally be made within 20 days of receipt of a complete complaint.

If, upon review of the complaint, OCR determines that the complaint does not provide sufficient information upon which to make a jurisdictional determination, OCR will notify the complainant of the additional information that is needed to complete the complaint for a jurisdictional determination.

The complainant must submit the requested information within 15 days of receipt of the request from OCR. If a complainant does not provide the requested information within the fifteen-day timeframe, OCR may dismiss the complaint for failure to cooperate with the process.

302. Notification to Complainant of Acceptance and/or Dismissal of Complaint

Generally, within 35 days of receipt of a complete complaint, OCR will issue a notice of acceptance and/or dismissal to the complainant. The notice will include a description of any allegations that have been accepted for investigation; include a description of any allegations that have been dismissed based on jurisdictional or timeliness determinations; and identify the next steps in the processing of the complaint.

If OCR has determined that the Department does not have jurisdiction related to any issues, OCR will, when appropriate, refer the complaint to another Federal agency for review/processing. OCR will inform a complainant of any referral of a complaint, or portion thereof, to another Federal agency.

303. Notification to Recipient

If OCR has determined that it has jurisdiction over the complaint, generally, within 35 days of receipt of a complete complaint, OCR will notify the recipient of the complaint.

The notice to the recipient will advise the recipient of the following:

1. The nature of the issue(s) accepted for investigation;
2. The program or activities of the recipient to which the complaint relates;
3. The opportunity to make, at any time prior to receipt of DOE's findings, a documentary submission responding to, rebutting, or denying the allegations made in the complaint; and
4. The schedule under which OCR will conduct the investigation and make a determination of compliance.

The notice to the recipient may also contain the identity of the complainant, if the complainant has provided written consent to reveal his/her/their identity, or if the Department determines, without the complainant's consent, that such action is necessary to address/resolve the complaint.

The notice to the recipient may contain a request for data and documents relevant to the complaint. If the notice does not contain such a request, any request for data and documents will be submitted under separate cover during the investigative stage of the process.

304. Referral to Another Federal Agency for Action when OCR has Jurisdiction

OCR may refer a complaint to another Federal agency to process, when appropriate, even if OCR has jurisdiction to process the complaint. When OCR refers a complaint (over which OCR has jurisdiction) to another Federal agency to process, OCR shall monitor the progress of the matter through liaison with the other agency. If the Federal agency to whom the matter has been referred does not timely address/resolve the matter, OCR may resume processing of the complaint. In such cases, OCR may adjust the timeframes listed in this Manual, as appropriate.

Section 4: Investigation

401. Initiation of Investigation for Accepted Issue(s)

If OCR determines that the Department has jurisdiction over the complaint, OCR will generally initiate an investigation of accepted issues within 35 days of receipt of the complete complaint.

The investigation is considered to have been initiated when the notice referenced in Section 303 above has been issued to the recipient.

Within 15 days of the issuance of a notice informing a complainant of the acceptance of any issue(s), pursuant to Section 302 above, the attorney assigned to the case will submit an investigative plan (IP) to the Chief, Civil Rights Division, for review and approval.

402. Conduct of the Investigation

Upon approval of the IP by the Chief, Civil Rights Division, the attorney assigned to the complaint will conduct the investigation of any accepted issue(s). The investigation may include, but is not limited to, obtaining a statement and relevant evidence from the complainant, recipient, any alleged responsible official(s), and any relevant witness(es).

The attorney assigned to the complaint will generally complete the investigation within 45 days of approval of the IP.

Section 5: Letter of Finding and Achieving Voluntary Compliance

501. Notice of Preliminary Findings Issued to Recipient

Generally within 90 days of initiating an investigation, the Department will advise the recipient of the following in writing:

1. Any preliminary findings;
2. Where appropriate, recommendations for achieving voluntary compliance; and
3. The opportunity to request that DOE engage in voluntary compliance negotiations prior to OCR's final determination of compliance or noncompliance.

The attorney assigned to the complaint will submit a draft notice of preliminary findings to the Chief, Civil Rights Division, for review within 75 days of initiation of the investigation. Upon review, the Chief, Civil Rights Division, will enter the draft notice of preliminary findings into ED concurrence.

In any matter where OCR makes a recommendation for achieving voluntary compliance, OCR shall notify the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, and the recipient of such recommendation(s).

502. Voluntary Compliance Efforts (if applicable)

502.1 Achieving Voluntary Compliance (if applicable)

A recipient has 45 days from receipt of the notice referenced in Section 501 above, to implement any recommendation(s) for voluntary compliance, to otherwise demonstrate voluntary compliance, and/or to show that any preliminary findings are false.

If a recipient does not timely take the steps outlined in Section 502.1, Paragraph 1, then OCR will issue a determination of compliance or noncompliance within 60 days of the recipient's receipt of the notice referenced in Section 501.

The attorney assigned to the complaint will submit a draft letter of finding, proposing a finding of compliance or noncompliance or a partial finding of compliance and/or noncompliance, to the Chief, Civil Rights Division, for review within 50 days of the recipient's receipt of the notice referenced in Section 501. Upon review, the Chief, Civil Rights Division, will enter the draft letter of finding into ED concurrence.

502.2 Voluntary Compliance Agreements (if applicable)

If a recipient seeks to establish voluntary compliance through an agreement to implement a specific and acceptable plan to achieve compliance, then the recipient must submit the proposed plan to OCR in writing. The agreement will not be complete unless it is signed by both the ED Director, or designee, and by an official who has authority to legally bind the recipient.

503. Finding of Compliance

If OCR determines the recipient is in compliance with Title IX, then the Department will notify the complainant and the recipient of such determination.

OCR shall also notify the complainant of any achievement of voluntary compliance.

504. Finding of Noncompliance

If OCR makes a determination of noncompliance, OCR shall immediately advise the recipient and the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, of (1) the determination of noncompliance; and (2) the fact that the recipient has an additional 10 days in which to come into voluntary compliance.

If voluntary compliance is not achieved within the ten-day time frame, the Department shall institute enforcement actions specified in 10 C.F.R. Part 1040, Subpart H, and outlined below in Section 7.

Section 6: Concurrent Court Proceedings

If the complainant or party other than the Attorney General of the United States has filed a lawsuit in Federal or State court alleging the same discrimination alleged in a Title IX complaint to DOE, and if during the OCR investigation of the complaint, the trial of the lawsuit is in progress, OCR will consult with the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to determine the need to continue or suspend the OCR investigation.

If OCR determines that it should suspend the investigation pending the court proceedings, then OCR will monitor the litigation through the court docket and through communication with the complainant.

Upon receipt of notice that the court made a finding of discrimination against the recipient in question that would constitute a violation of Title IX or DOE Title IX implementing regulations, DOE may institute administrative proceedings (as specified in 10 C.F.R. Part 1040, Subpart H) after OCR has advised the recipient, in writing, of an opportunity to request voluntary compliance.

Any voluntary compliance agreements must comport with Section 502.2.

Section 7: Enforcement Efforts Following Determination of Non-compliance

701. Available Enforcement Measures

If there appears to be a failure or threatened failure by a recipient to comply with Title IX or DOE Title IX implementing regulations, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, OCR may effect compliance by the suspension of, termination of, or refusal to grant or to continue DOE Federal financial assistance, or by any other means authorized by law.

Such other means may include, but are not limited to:

1. Referral of the matter to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under Title IX or any assurance or other contractual undertaking; and/or
2. Any applicable proceeding under State or local law.

702. Requirements to Initiate Enforcement Measures

702.1 Requirements to Initiate Enforcement by Suspension of, Termination of, or Refusal to Grant or to Continue to Grant DOE Federal Financial Assistance

No order by the Department to suspend, terminate, or refuse to grant or to continue Federal financial assistance is to become effective until:

1. The ED Director provides notice of the proposed order to the Executive Assistant to the Secretary of Energy, if the action is contemplated against a State or local government;
2. OCR has advised the recipient of the Department's determination of noncompliance (see Section 504) and OCR has determined that compliance cannot be secured by voluntary means;³
3. There has been an express finding on the record, after opportunity for hearing with the Federal Energy Regulatory Commission (FERC) (see Sections 8 and 9), of a failure by the recipient to comply with Title IX and DOE Title IX implementing regulations;
4. The FERC has notified the Secretary of Energy of its finding of noncompliance; and
5. Thirty days has expired since the Secretary, or designee, has filed a written report of the circumstances and the grounds for such action with the committee of the House of Representatives and the committee of the Senate having legislative jurisdiction over the program(s) involved.

Any action to suspend, terminate, or to refuse to grant or to continue Federal financial assistance shall be (1) limited to the particular political entity or part of that entity or other recipient to whom the finding has been made; and (2) limited in its effect to the particular program or part of the program in which the noncompliance has been found.

³ OCR will determine that compliance cannot be secured by voluntary means if voluntary compliance has not been secured within the time periods set forth above in the instant Manual.

702.2 Requirements to Initiate Enforcement by Other Means Authorized by Law

No action to effect compliance by any other means authorized by law shall be taken until:

1. OCR has determined that compliance cannot be secured by voluntary means;
2. The recipient has received notice from OCR of the Department's determination of noncompliance (see Section 504), which informed the recipient that the recipient had an additional 10 days in which to come into voluntary compliance; and
3. At least 10 days has expired since the recipient received the notice of the Department's determination of noncompliance (see Section 504).

Section 8: Notice of Opportunity for a Hearing

801. Notice of Opportunity for a Hearing

Before the Department may effect compliance of a recipient (that has been determined to be in noncompliance) through the suspension of, termination of, or refusal to grant or to continue DOE Federal financial assistance (see Sections 7 and 702.1), the Department must give the recipient notice of the opportunity for a hearing.

The notice of the opportunity for a hearing must be sent to the recipient by registered or certified mail (return receipt requested), and must include the following information:

1. The action that the Department proposes to be taken (*i.e.*, suspension of, termination of, or refusal to grant or to continue DOE Federal financial assistance);
2. The alleged item(s) of noncompliance with Title IX and DOE Title IX implementing regulations;
3. The issue(s) on which the determination of noncompliance has/have been made;
4. A statement that compliance with Title IX and DOE Title IX implementing regulations may be effected by an order providing for the suspension of, termination of, or refusal to grant or to continue assistance, as appropriate, under the program(s) involved;
5. A statement that the recipient has 20 days from the date of receipt of the notice of the opportunity for a hearing to request a hearing; and
6. A statement that the receipt has 20 days from the date of receipt of the notice of the opportunity for a hearing to file an answer under oath or affirmation with the ED Director.

802. Procedure if Recipient Timely Requests a Hearing

If a recipient timely requests a hearing, OCR will notify the DOE Office of General Counsel of the hearing request with three business days.

The DOE General Counsel, or designee, shall submit the hearing request along with other appropriate documents to the FERC.

803. A Recipient's Answer, Waiver of Hearing, and/or Stipulation

803.1 Recipient's Answer but Waiver of or Failure to Request Hearing

A recipient may file an answer under Section 801, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law, or the right to seek review, by the FERC in accordance with the provisions established by the FERC.⁴

At the time an answer is filed under Section 801, the recipient may also submit written information or argument for the record if the recipient does not request a hearing.

803.2 Consent to Entry of Order

An answer or stipulation filed under Section 801 may include the recipient's consent to the entry of an order in substantially the same form set forth in the notice of the opportunity for a hearing. A recipient's consent to an entry of an order may be entered by the DOE General Counsel, or designee.

The consent of a recipient to the entry of an order shall constitute a waiver by the recipient of a right to:

1. A hearing under Section 902 of Title IX;
2. Findings of fact and conclusions of law; and
3. Seek review by the FERC.

An order entered in accordance with Section 803.2 shall constitute the final decision of the Department, unless the FERC, within 45 days of the entry of the Order by DOE, issues a subsequent decision which shall then constitute the final decision of the Department.

OCR will ensure that a copy of any order entered by FERC in this circumstance is mailed to the recipient and to the Complainant.

804. Recipient's Failure to Timely File an Answer or to Appear at a Hearing

If a recipient fails to timely file an answer under Section 801, or if the recipient requests a hearing but fails to appear at the hearing, the failure of the recipient shall constitute a waiver by the recipient of a right to:

1. A hearing under Section 902 of Title IX;
2. Findings of fact and conclusions of law; and
3. Seek review by the FERC.

⁴ Appendix D has been reserved to insert a copy of the FERC hearing rules and/or regulations.

In the event of a waiver pursuant to Section 804, the Secretary, or designee, may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of the opportunity for a hearing.

An order entered in accordance with Section 804 shall constitute the final decision of the Department, unless the FERC, within 45 days of the entry of the Order by DOE, issues a subsequent decision which shall then constitute the final decision of the Department.

OCR will ensure that a copy of any order entered by FERC in this circumstance is mailed to the recipient and to the Complainant.

Section 9. Authority of the Federal Energy Regulatory Commission to Conduct Hearings

The FERC has authority under Section 402(b) of the DOE Organization Act, Pub. L. 95-91, to promulgate regulations regarding the conduct of hearings to deny or terminate Federal financial assistance.

Section 10. Consolidated or Joint Hearings

In cases where the same or related facts are alleged to constitute (1) noncompliance with Title IX and DOE Title IX implementing regulations in relation to two or more programs to which the 10 C.F.R. Part 1040 applies, or (2) noncompliance with 10 C.F.R. Part 1040 and the Title IX implementing regulations of one or more other Federal departments or agencies, the Secretary or a designee, in coordination with FERC may, by agreement with other Federal departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with 10 C.F.R. Part 1040.

Final decision in such cases shall be made in accordance with procedures established by the FERC.

Section 11. Judicial Review

Final DOE actions taken pursuant to this Manual to withhold or terminate Federal financial assistance are subject to judicial review pursuant to Section 903 of Title IX.

Appendices

- A. Related Legal Authorities
- B. 10 C.F.R. Part 1040, *Non-Discrimination in Federally Assisted Programs or Activities*
- C. 10 C.F.R. Part 1042, *Non-Discrimination on the Basis of Sex in Education Programs or Activities*
- D. Reserved for FERC Hearing Rules and/or Regulations

Appendix A. Related Legal Authorities

The legal authorities relied on in this Manual include the following statutes and regulations:

- *The Freedom of Information Act* (FOIA), 5 U.S.C. § 552.
- *The Privacy Act of 1974* (Privacy Act), 5 U.S.C. § 552(a).
- *Title IX of the Education Amendments of 1972, as amended*, 20 U.S.C. § 1681 *et seq.*
- *Department of Energy Organization Act*, 42 U.S.C. § 7101 *et seq.*
- *Non-Discrimination in Federally Assisted Programs or Activities*, 10 C.F.R. Part 1040.
- *Non-Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 10 C.F.R. Part 1042.
- *Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs; Complaint Procedures*, 28 C.F.R. § 42.408.
- *Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs*, Executive Order 13160.

Appendix B.

10 C.F.R. Part 1040, *Non-Discrimination in Federally Assisted Programs or Activities*

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

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AUTHORITY: 20 U.S.C. 1681-1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d-7, 3601-3631, 5891, 6101-6107, 7101 *et seq.*

SOURCE: 45 FR 40515, June 13, 1980, unless otherwise noted.

Subpart A—General Provisions

§1040.1 Purpose.

(a) The purpose of this part is to implement Title VI of the Civil Rights Act of 1964, Pub. L. 88-352; section 16 of the Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438; Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318, Pub. L. 93-568 and Pub. L. 94-482; section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93-112; the Age Discrimination Act of 1975, Pub. L. 94-135; Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284; and civil rights provisions of statutes administered pursuant to authority under the DOE Organization Act, Pub. L. 95-91, so no person shall, on the ground of race, color, national origin, sex (when covered by section 16 and section 401), handicap, or age, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the Federal financial assistance is to provide employment or when the delivery of services is affected by the recipient's employment practices (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 of Energy (after this referred to as DOE or the Department). Employment coverage may be broader in scope when section 16, section 401, or Title IX are applicable.

(b) DOE regulations on enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by DOE are in part 1041 of this chapter.

(c) DOE regulations on enforcement of nondiscrimination on the basis of sex, under Title IX of the Education Act Amendments of 1972, as amended, are in part 1042 of this chapter.

[45 FR 40515, June 13, 1980, as amended at 66 FR 4630, Jan. 18, 2001; 68 FR 51346, Aug. 26, 2003]

§1040.2 Application.

(a) The application of this part is to any program or activity for which Federal financial assistance is authorized under laws administered by DOE. Types of Federal financial assistance to which this part applies are listed in Appendix A of this part. Appendix A is to be revised from time to time by notice published in the FEDERAL REGISTER. This part applies to money paid, property transferred, or other Federal financial assistance including cooperative agreements extended, by way of grant, loan, or contract by DOE, or grants awarded in the performance of a contract with DOE by an authorized contractor or subcontractor, the terms of which require compliance with this part. If any statutes implemented by this part are otherwise applicable, the failure to list a type of Federal financial assistance in appendix A does not mean that a program or activity is not covered by this part.

(b) This part does not apply to:

(1) Contracts of insurance or guaranty;

(2) Employment practices under any program or activity except as provided in §§1040.12, 1040.14, 1040.41, 1040.47 and 1040.66; or

(3) Procurement contracts under title 41 CFR part 1 or part 9.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.3 Definitions—General.

(a) *Academic institution* includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any aid, benefit, service, project, or facility designed to educate or train individuals.

(b) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(c) *Agency* or *Federal agency* refers to any Federal department or agency which extends Federal financial assistance.

(d) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a primary recipient as a condition to becoming eligible for Federal financial assistance.

(e) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(f) *Director, FAPD* refers to the Director, Federally Assisted Programs Division, Office of Equal Opportunity, DOE.

(g) *Compliance Review* means an analysis of a recipient's selected employment practices or delivery of services for adherence to provisions of any of the subparts of this part.

(h) *Department* means the Department of Energy (DOE).

(i) *FERC* means the Federal Energy Regulatory Commission, DOE.

(j) Where designation of persons by race, color, or national origin is required, the following designations are to be used:

(1) *Black*, not of Hispanic origin. A person having origins in any of the black racial groups of Africa.

(2) *Hispanic*. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander*. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Hawaiian Islands, and Samoa.

(4) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic origin*. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Paragraphs (j) (1) through (5), inclusive, set forth in this section are in conformity with Directive No. 15 of the Office of Federal Statistical Policy and Standards. To the extent that these designations are modified, paragraphs (j) (1) through (5), inclusive, set forth in this section are to be interpreted to conform with those modifications.

(k) *Director* means the Director, Office of Equal Opportunity, DOE.

(l) *Disposition* means any treatment, handling, decision, sentencing, confinement, or other proscription of conduct.

(m) *Employment practices*, see individual section headings.

(n) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(o) *Federal financial assistance* includes:

(1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interest in property,

(3) The detail of or provision of services by Federal personnel,

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease, or furnishing of services to the recipient, and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(p) *General Counsel* mean the Office of the General Counsel Department of Energy.

(q) *Government organization* means the political subdivision for a prescribed geographical area.

(r) *Investigations* include fact-finding efforts and attempts to secure voluntary resolution of complaints.

(s) *Noncompliance* means the failure of a recipient or subrecipient to comply with any subpart of this part.

(t) *Primary recipient* means any person, group, organization, state, or local unit of government which is authorized or required to extend Federal financial assistance to another recipient.

(u) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (u)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (u)(1), (2), or (3) of this section.

(v) *Responsible Departmental or DOE Official* means the official of the Department of Energy that has been assigned the principal responsibility for administration of the law extending Federal financial assistance.

(w) *Reviewing authority* means the component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(x) *Secretary* means the Secretary of the Department of Energy.

(y) The term *United States* includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Island, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States, and the term *State* includes any one of the foregoing.

(z) *Headquarters* means DOE offices located in Washington, D.C.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.4 Assurances required and preaward review.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance on a form specified by the Director that the program or activity will be operated in compliance with applicable subparts. Such assurances are to include provisions which give the United States a right to seek judicial enforcement.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structure on the property, the assurance obligates the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance obligates the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance obligates the recipient to all terms and conditions contained in the certificate of assurance for the period during which Federal financial assistance is extended.

(c) *Covenants*. Where Federal financial assistance is provided in the form of real property, structures, improvements on or interests in the property, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest in the property from the Department:

(1) The instrument effecting or recording this transfer is to contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits; or

(2) Where no transfer of property is involved or imposed with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant is to also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a material breach of the covenant. If a transferee of real property manages to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing facilities on the property for the purpose for which the property was transferred, the Director may, upon request of the transferee and, if necessary to accomplish such financing and upon such conditions, as he or she deems appropriate, agree to forbear the exercise of the right to revert title for so long as the lien of the mortgage or other encumbrance remains effective.

(d) *Assurances from government agencies*. In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section is to extend to any other department, agency, or office of the same governmental unit.

(e) *Assurance from academic and other institutions*. (1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section is to extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility.

(f) *Continuing Federal financial assistance*. Any State or State agency applying for continuing Federal financial assistance subject to this part shall, as a condition for the extension of such assistance:

(1) Provide a statement that the program or activity is (or, in the case of a new program or activity, will be) conducted in compliance with applicable subparts; and

(2) Provide for such methods of administration as are found by the Director or a designee to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this part.

(g) *Assistance for construction.* Where the assistance is sought for the construction of a facility, or a part of a facility, the assurance is to extend to the entire facility. If a facility to be constructed is part of a larger system, the assurance is to extend to the larger system.

(h) *Pre-award review.* Prior to and as a condition of approval, all applications for Federal financial assistance are to be reviewed by the appropriate Civil Rights Department official who is to make a written determination of the applicant's compliance with this part. The basis for such a determination is to be the submission of the assurance of compliance as specified in paragraph (a) and a review of data to be submitted by the applicant as specified by the Director. For purposes of this subsection, the appropriate departmental official at headquarters level is the Director, FAPD, Office of Equal Opportunity, and at the regional level it is to be the Civil Rights Officer delegated by the Director as having review authority for determining compliance with requirements of this part. Where a determination of compliance cannot be made from this data, DOE may require the applicant to submit necessary additional information and may take other steps necessary to make the determination of compliance. Such other steps may include, for example, communicating with local government officials or protected class organizations and field reviews. Any agreement to achieve voluntary compliance as a result of a preaward review shall be in writing. In the case of Title VI, the Director will notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews. The opportunity for a hearing as provided under §1040.113 is applicable to this section.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.5 Designation of responsible employee.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to carry out its responsibilities under this part. The recipient shall publish the name, office address and telephone number of the employee or employees appointed under this paragraph.

(b) A recipient shall display prominently, in reasonable numbers and places, posters which state that the recipient operates a program or activity subject to the nondiscrimination provisions of applicable subparts, summarize those requirements, note availability of information regarding this part from the recipient and DOE, and explain briefly the procedures for filing a complaint. Information on requirements of this part, complaint procedures and the rights of beneficiaries are to be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs or activities and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast information in the news media, the recipient shall insure that such publications and broadcasts state that the program or activity in question is an equal opportunity program or activity or otherwise indicate that discrimination in the program is prohibited by Federal law.

(c) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program or activity requires service or information in a language other than English in order to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and size and concentration of such population, to provide information in appropriate languages (including braille) to such persons. This requirement applies to written material of the type which is ordinarily distributed to the public. The Department may require a recipient to take additional steps to carry out the intent of this subsection.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.6 Notice.

(a) A recipient shall take appropriate, initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of race, color, national origin, sex (where sec. 16 or sec. 401 apply), handicap, or age. The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, and treatment of, or employment in its programs or activities and inform employees of their rights under this part. The notification is to include an identification of the responsible employee designated under §1040.5. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The provisions of §1040.5(c) to provide information in appropriate languages (including braille), apply to this section.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.7 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of race, color, national origin, sex, handicap, or age in any program or activity receiving Federal financial assistance, the recipient shall take remedial action as the Director considers necessary to overcome the effects of the discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of race, color, national origin, sex, handicap, or age in any program or activity, a recipient may continue to encourage participation by all persons regardless of race, color, national origin, sex, handicap, or age.

(c) *Self-evaluation.* Each recipient shall, within one year of the effective date of this part:

(1) Whenever possible, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify any policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of discrimination which resulted or may have resulted from adherence to these questionable policies and practices.

(d) Availability of self-evaluation and related materials. Recipient shall maintain on file, for at least three years following its completion, the evaluation required under paragraph (c) of this section, and shall provide to the Director, upon request, a description of any modifications made under paragraph (c)(2) of this section and of any remedial steps taken under paragraph (c)(3) of this section.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51346, Aug. 26, 2003]

§1040.8 Effect of employment opportunity.

Due to limited opportunities in the past, certain protected groups may be underrepresented in some occupations or professions. A recipient's obligation to comply with this part is not alleviated by use of statistical information which reflects limited opportunities in those occupations or professions.

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as Amended; and Section 401 of the Energy Reorganization Act of 1974

§1040.11 Purpose and application.

(a) The purpose of this subpart is to implement title VI of the Civil Rights Act of 1964 (title VI) and the pertinent regulations of DOE so that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance of the type subject to title VI. This subpart also implements section 16 of the Federal Energy Administration Act of 1974, as amended (section 16) and section 401 of the Energy Reorganization Act of 1974 (section 401) so that no person shall be excluded on the ground of sex from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance subject to section 16 or 401. The coverage of employment practices is explained in §1040.14.

(b) The application of this subpart is to delivery of services by and the covered employment practices of recipients and subrecipients administering or participating in any program or activity receiving Federal financial assistance under laws administered by DOE covered by title VI. In addition to services and employment practices, this subpart applies to any activities of recipients or subrecipients receiving Federal financial assistance subject to section 16 and section 401.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.12 Definitions.

(a) *Covered employment* means employment practices covered by title VI, section 16 and section 401.

(1) Under title VI, such practices are those which:

(i) Exist in a program where a primary objective of the Federal financial assistance is to provide employment; or

(ii) Cause discrimination on the basis of race, color, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

(2) Under section 16 and section 401, such practices include, but are not limited to, employment practices covered by title VI when alleging discrimination on the basis of sex. All employment practices of a recipient or subrecipient of Federal financial assistance subject to section 16 and section 401 are covered employment practices.

(b) *Title VI* refers to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* which prohibits discrimination on the ground of race, color or national origin in programs or activities receiving Federal financial assistance. The definitions set forth in §1040.3 of subpart A to the extent not inconsistent with this subpart, are applicable to and incorporated into this subpart.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.13 Discrimination prohibited.

(a) *General.* No person in the United States shall be excluded on the ground of race, color, national origin, or sex (when covered by section 16 or section 401), from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) *Specific discriminatory action prohibited.* A recipient to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex (when covered by section 16 or section 401):

(1) Deny any individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his/her receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(5) Treat an individual differently from others in determining whether such individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford such individual an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in §1040.14 of this subpart); or

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(c) A recipient, in determining the type of Federal financial assistance (i.e., disposition, services, financial aid, benefits, or facilities) which will be provided under any program, or the class of individuals to whom, or the situations in which the assistance will be provided, may not, directly or

through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex (when covered by section 16 and section 401) or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex (when covered by section 16 or section 401).

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex (when covered by section 16 or 401) or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.

(e) For the purpose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

(f) The enumeration of specific forms of prohibited discrimination in this paragraph and in §1040.14 of this subpart does not limit the generality of the prohibition in paragraph (a) of this section.

(g) *Exemptions.* Exclusion from benefits for protected groups. An individual is not to be considered subjected to discrimination by reason of his/her exclusion from benefits limited to individuals of a particular race, color, national origin or sex different from his/hers when the exclusion is provided for or required by Federal law, for example, Federal financial assistance provided exclusively to serve on-reservation Indians.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.14 Covered employment.

(a) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient of the assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the grounds of race, color, national origin, or sex (when covered by section 16 and section 401) in its employment practices under the program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion or transfer, training, participation in upward mobility projects, rates of pay or other forms of compensation, and use of facilities). This prohibition also applies to programs where the primary objective of the Federal financial assistance is:

(i) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(ii) To provide work experience which contributes to the education or training of the individuals involved;

(iii) To reduce the unemployment of individuals or to help them through employment to meet subsistence needs; or

(iv) To provide employment to individuals who, because of handicaps, cannot be readily absorbed in the competitive labor market. The requirements applicable to construction under any

such program are to be those specified in or under part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

(2) In regard to Federal financial assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, national origin, or sex (when covered by section 16 or section 401) in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (a)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(3) Paragraph (a)(1) also applies to covered employment as defined in §1040.12(a)(2).

(b) Enforcement of title VI compliance with respect to covered employment practices is not to be superseded by State or local merit systems relating to the employment practices of the same recipient.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

Subpart C [Reserved]

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as Amended

GENERAL PROVISIONS

§1040.61 Purpose and application.

(a) The purpose of this subpart is to implement sec. 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

(b) This subpart applies to each recipient or subrecipient of Federal financial assistance from DOE and to each program or activity that receives assistance.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.62 Definitions.

(a) *Executive Order* means Executive Order 11914, titled “Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs” issued on April 28, 1976.

(b) *Section 504* means sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) *Handicapped person* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

(d) As used in paragraph (c) of this section, the phrase:

(1) *Physical or mental impairment* means—

(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, genito-urinary; 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, when current use of drugs and/or alcohol is not detrimental to or interferes with the employee's performance, nor constitutes a direct threat to property or safety of others.

(2) *Major life activities* means 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 that is treated by a recipient 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 paragraphs (d)(1) (i) and (ii) of this section, but is treated by a recipient as having such an impairment.

(e) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person:

(i) Of an age during which non-handicapped persons are provided such services;

(ii) Of any age during which it is mandatory under state law to provide such services to handicapped persons; or

(iii) To whom a state is required to provide a free appropriate public education under sec. 612 of the Education for All Handicapped Children Act of 1975, Pub. L. 94-142.

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(f) *Handicap* means condition or characteristic that renders a person a handicapped person as defined in paragraph (c) of this section.

(g) *Historic properties* means those architecturally, historically or culturally significant properties listed in or eligible for listing in the National Register of Historic Places or such properties designated under a statute of the appropriate State or local governmental body.

(h) *Building alterations* means those changes to the existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as alterations to stairways, doors, toilets, elevators, and site improvements.

(i) *Structural changes* means those changes which alter the structure of a historic building including, but not limited to, its bearing walls and all types of post and beam systems in wood, steel, iron or concrete.

The definitions set forth in §1040.3 of this part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§1040.63 Discrimination prohibited.

(a) *General.* No qualified handicapped person 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 that receives Federal financial assistance from DOE.

(b) *Discriminatory actions prohibited.* (1) A recipient, 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 person the opportunity to participate in or benefit from the aid, benefit or service;

(ii) Afford a qualified handicapped person 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 handicapped person 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 handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of permissible separate or different aid, benefits, or services, a recipient may not deny a qualified handicapped person the opportunity to participate in aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site of a facility, an applicant for assistance or a recipient may not make selections that—

(i) Have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance from DOE; or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of non-handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall take appropriate steps to ensure that communications with their applicants, employees and handicapped persons participating in federally assisted programs or activities or receiving aids, benefits or services, are available to persons with impaired vision and hearing.

(e) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.64 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for non-handicapped persons.

(c) *Effect of other regulations.* All regulations, orders, or similar directions issued by any officer of DOE which impose requirements designed to prohibit discrimination against individuals on the grounds of race, color, national origin, sex, age or handicap under any program or activity to which this part applies, and which authorize the suspension, termination or refusal to grant or to continue Federal financial assistance for failure to comply with these requirements, are superseded to the extent that discrimination is prohibited by this part. Nothing in this part is to relieve any person of the obligation assumed or imposed under any superseded regulation, order, instruction, or similar direction prior to the effective date of this part. Nothing in this part is to supersede the effective date of this part. Nothing in this part is to supersede Executive Orders 10925, 11114, 11063, 11246, and regulations issued under these authorities, or supersede any other regulations or instructions which prohibit discrimination on the ground of race, color, national origin, sex, age, or handicap in any program or activity to which this part does not apply.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.65 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in subparts G and H of this part.

EMPLOYMENT PRACTICES

§1040.66 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination employment under any program or activity to which this subpart applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does

not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeships.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick or otherwise;

(6) Fringe benefits available by virtue of employment, whether administered by the recipient or not;

(7) Selection and provision of financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.67 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.68 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons unless the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question.

(b) A recipient shall select and administer tests concerning employment to best ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude or other factors the test purports to measure except where those skills are the factors that the test purports to measure.

§1040.69 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, under §1040.7 of this part, or is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity under §1040.7 of subpart A of this part, or when a recipient is taking affirmative action under Sec. 503 of the Rehabilitation Act of 1973, as amended, the recipient may invite applicants for employment to indicate whether, and to what extent, they are handicapped *Provided that*:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use

solely in connection with its remedial action obligations or its voluntary or affirmative action efforts;
and

(2) The recipient states clearly that the information is requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this subpart.

(c) Nothing in this section is to prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided that all entering employees are subjected to the examination regardless of handicap or absence of handicap and results of the examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are to be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with Sec. 504 of the Rehabilitation Act of 1973, as amended, shall be provided relevant information upon request.

ACCESSIBILITY

§1040.71 Discrimination prohibited.

No handicapped person shall, because a recipient's facilities are inaccessible to or unuseable by handicapped persons, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance from DOE.

§1040.72 Existing facilities.

(a) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and useable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section 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 in conformance with the requirements of §1040.73 or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the

requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this subpart except that where structural changes in facilities are necessary, the changes are to be made as expeditiously as possible, but in no event later than three years after the effective date of this subpart.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and the plan is to meet with the approval of the Director, Federally Assisted Programs Division, Office of Equal Opportunity, DOE. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility to and usability by handicapped persons of its program or activity.

(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 full accessibility under §1040.72(a) and, if the time period or 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 person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and useable by, handicapped persons.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§1040.73 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient is to be designed and constructed in a manner that the facility or part of the facility is readily accessible to, and useable by, handicapped persons, if the construction was commenced after the effective date of this subpart.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this subpart in a manner that affects or could affect the usability of the facility or part of the facility is, to the maximum extent feasible, to be altered in a manner that the altered portion of the facility is readily accessible to and useable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR 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 UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 40515, June 13, 1980, as amended at 55 FR 52138, 52140, Dec. 19, 1990]

§1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. The recipient shall exhaust subsection (b)(1) (methods to accomplish accessibility without building alterations or structural changes) before proceeding to subsection (b)(2) (methods to accomplish program accessibility resulting in building alterations). The recipient shall exhaust subsection (b)(2) (methods to accomplish accessibility resulting in building alterations) before proceeding to subsection (b)(3) (methods to accomplish accessibility resulting in structural changes).

(1) *Methods to accomplish accessibility without building alterations or structural changes.* The recipient shall investigate compliance methods which do not alter the historic character or architectural integrity of the property and shall utilize such methods unless such methods are ineffective in achieving accessibility. Such methods may include, but are not limited to:

- (i) Reassigning aid, benefits, or services to accessible locations within the facility.
- (ii) Assigning persons to aid handicapped persons into or through an otherwise inaccessible facility.
- (iii) Delivering aid, benefits, or services at alternative accessible sites operated by or available for such use by the recipient.
- (iv) Adopting other innovative methods which make aid, benefits, or services accessible to the handicapped.

(2) *Methods to accomplish accessibility resulting in building alterations.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(1) prior to utilizing building alteration as a method of accomplishing program accessibility. Alterations must comply with the accessibility standards adopted in these regulations. Building alterations shall be undertaken so as not to alter or destroy historically, architecturally, or culturally significant elements or features.

(3) *Methods to accomplish accessibility resulting in structural changes.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(2) before considering structural changes as a method of accomplishing program accessibility. Structural changes must comply with

the accessibility standards adopted in these regulations. Structural changes shall be undertaken so as not to alter or destroy historically, architecturally or culturally significant elements or features.

(b) *Modification or waiver of accessibility standards.* The applicability of the accessibility standards set forth in these regulations may be modified or waived on a case-by-case basis, upon application to the Director, FAPD, where the recipient can demonstrate that, because of the nature of the activity, the provision of access would be infeasible or would substantially impair the historic, architectural or cultural integrity of the historic property.

(National Historic Preservation Act of 1966, Pub. L. 89-665, 80 Stat 915, 16 U.S.C. 470; 11593, 3 CFR 1971 Comp., p. 154; 36 CFR part 800)

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

AUTHORITY: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

SOURCE: 50 FR 8089, Feb. 27, 1985, unless otherwise noted.

GENERAL PROVISIONS

§1040.81 Purpose.

The purpose of these regulations is to implement the Age Discrimination Act of 1975, as Amended, which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. In accordance with the Age Discrimination Act, federally assisted programs or activities and recipients of Federal funds may continue to use age distinctions and factors other than age which meet the requirements of the Act and these regulations.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.82 Application.

(a) These regulations apply to each program or activity which receives Federal financial assistance provided by DOE.

(b) These regulations do not apply to—

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.83 Definitions.

(a) *Act* means the Age Discrimination Act of 1975 as amended title III of Pub. L. 94-135, 42 U.S.C. 6101 *et seq.*

(b) *Action* means any act, activity, policy, rule, standard or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is or the number of years from the date of a person's birth.

(d) *Age distinction* means any action using age or an age-related term (for example, "18 or over").

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, "children", "adult", "older persons", but not "student").

(f) *Days* mean calendar days.

(g) *Discrimination* means unlawful treatment based on age.

(h) *FERC* means the Federal Energy Regulatory Commission.

(i) *Field Civil Rights Officer* means the official in each DOE field office with responsibility for administering DOE's Civil Rights Program related to nondiscrimination in Federally assisted programs or activities.

(j) *Recipient* means any State or its political subdivision, instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes an individual who is the ultimate beneficiary of the assistance.

(k) *Secretary* means the Secretary, Department of Energy.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§1040.84 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §1040.86 and of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§1040.85 Definitions of “Normal Operation” and “Statutory Objective”.

For purpose of §§1040.86 and 1040.87, the terms *normal operation* and *statutory objective* shall have the following meanings:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§1040.86 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by §1040.84, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§1040.87 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by §1040.84 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§1040.88 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take such remedial action as the Director, Office of Civil Rights and Diversity, considers necessary to overcome the effects of the discrimination.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program or activity which serves the elderly or children, in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program or activity.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§1040.86 and 1040.87 is on the recipient of Federal financial assistance.

RESPONSIBILITIES OF DOE RECIPIENTS

§1040.89-1 General responsibilities.

Each DOE recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and these regulations. A recipient also has responsibility to maintain records, provide information, and afford access to its records to DOE, to the extent required to determine whether it is in compliance with the Act and these regulations.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-2 Notice to subrecipients.

Where a recipient awards Federal financial assistance from DOE to its subrecipients, the recipient shall provide the subrecipients written notice of their obligations under these regulations.

§1040.89-3 Information requirements.

Each recipient shall: (a) Upon request make available to DOE information necessary to determine whether the recipient is complying with the Act and these regulations.

(b) Permit reasonable access by DOE, upon request, to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

INVESTIGATION, CONCILIATION AND ENFORCEMENT PROCEDURES

§1040.89-4 Compliance reviews.

(a) DOE may conduct preaward and postaward compliance reviews of recipients as prescribed in this part or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOE may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review indicates a violation of the Act or these regulations, DOE will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOE will arrange for enforcement as described in §1040.89-10.

§1040.89-5 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a written complaint with DOE alleging discrimination prohibited by the Act or these regulations. A complainant must file a complaint within 180 days from the date he/she first had knowledge of the alleged act of discrimination. For good cause shown, however, the Director, Office of Civil Rights and Diversity, may extend the time limit for filing a complaint. Complaints may be submitted to Field Civil Rights Officers located in DOE's field offices or to the Director, Office of Civil Rights and Diversity, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

(b) The Director, Office of Civil Rights and Diversity, will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact DOE for information and assistance regarding the complaint resolution process.

(c) The Director, Office of Civil Rights and Diversity, will refer any complaint outside the jurisdiction of DOE to the proper Federal department or agency and will also notify the complainant and the recipient of the referral. The notification will contain an explanation for the referral and the name, telephone number, and address of the Federal department or agency office having jurisdiction over the matter complained.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-6 Mediation.

(a) *Referral of complaints for mediation.* DOE will refer to the Federal Mediation and Conciliation Service, in accordance with 45 CFR 90.43(c)(3), all complaints that:

- (1) Fall within the jurisdiction of the Act and these regulations; and
- (2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before the Director, Office of Civil Rights and Diversity, will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to the Director, Office of Civil Rights and Diversity, DOE. DOE will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) DOE will use the mediation process for a maximum of 60 days after referring a complaint to mediation. Mediation ends if:

- (1) 60 days elapse from the time the mediation agency receives the complaint; or
- (2) Prior to the end of the 60 day mediation period, an agreement is reached; or
- (3) Prior to the end of that 60 day mediation period, the mediator determines that an agreement cannot be reached.

(e) The mediator shall return unresolved complaints to the Director, Office of Civil Rights and Diversity, DOE.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-7 Investigation.

(a) *Informal Investigation.* (1) The Director, Office of Civil Rights and Diversity, will review complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of this review, Field Civil Rights Officers will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties.

(3) If the complaint is resolved during the informal investigation, DOE will put the agreement in writing and have it signed by the parties and the Director, Office of Civil Rights and Diversity.

(4) The settlement shall not affect the operation of any other enforcement effort of DOE, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal Investigation*. If Field Civil Rights Officers cannot resolve the complaint through informal inquiry, the Director, Office of Civil Rights and Diversity, will assign an Investigator to conduct a formal investigation of the complaint. If the investigation indicates a violation of the Act or these regulations, DOE will attempt to obtain voluntary compliance. If DOE cannot obtain voluntary compliance, it will begin enforcement as described in §1040.89-10 and 10 CFR part 1040, subpart H, §1040.111.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-8 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of DOE's investigation, conciliation, and enforcement process.

§1040.89-9 Compliance procedure.

(a) DOE may enforce the Act and these regulations through procedures prescribed in subpart H of DOE regulation 10 CFR part 1040—Nondiscrimination in Federally Assisted Programs or Activities, which calls for—

(1) Termination of a recipient's Federal financial assistance from DOE for a program activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before the Federal Energy Regulatory Commission (FERC). Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from DOE under this section.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations, or under the terms of the Federal financial assistance.

(ii) Use of any requirement of, or referral to, any Federal, State, or local government agency that will have the effect of correcting a violation of the Act of these regulations.

(b) DOE will limit any termination under §1040.89-9(a)(1) to the particular recipient and particular program or activity DOE finds in violation of these regulations. DOE will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from DOE.

(c) DOE will take no action under paragraph (a) until:

(1) The Director, Office of Civil Rights and Diversity, has advised the recipient of its failure to comply with the Act, these regulations, or the terms of the Federal financial assistance and has determined that voluntary compliance cannot be obtained.

(2) Thirty (30) days have elapsed after the Secretary or the Secretary's designee has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOE also may defer granting new Federal financial assistance to a recipient when a hearing under §1040.89-10 is initiated.

(1) New Federal financial assistance from DOE includes all assistance for which DOE requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities during the deferral period. New Federal financial assistance from DOE does not include increases in funding as a result of changes, computation of formula awards, or assistance awarded prior to the beginning of a hearing under §1040.89-10.

(2) DOE will not defer new assistance until the recipient has received a notice of an opportunity for a hearing under §1040.89-10. DOE will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and FERC. DOE will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing resulted in a finding against the recipient.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-10 Hearings, decisions, post-termination proceedings.

DOE procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to DOE enforcement of these regulations. They are 10 CFR subpart H §§1040.121 through 1040.124.

§1040.89-11 Remedial action by recipients.

Where the Director, Office of Civil Rights and Diversity, finds a recipient has discriminated on the basis of age, the recipient shall take such remedial action as the Director, OEO, may require to end the discriminatory practice or policy and/or to overcome the effects of the discrimination.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-12 Alternate funds disbursement procedure.

(a) When DOE withholds funds from a recipient under these regulations, the Secretary or designee may disburse the withheld funds directly to an alternate recipient(s), any public or private organization or agency, or State or political subdivision of the State.

(b) The Secretary or designee will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§1040.89-13 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) One hundred eighty (180) days have elapsed since the complainant filed the complaint and DOE has made no findings with regard to the complainant; or

(2) DOE issues any findings in favor of the recipient.

(b) If DOE fails to make a finding within 180 days or issues a finding in favor of the recipient, the Director, Office of Civil Rights and Diversity, will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney fees, but that the complainant must demand these costs in the complaint;

(iii) That, before commencing the action, the complainant shall give 30 days notice, by registered mail, to the Secretary of DOE, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act and these regulations; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

Appendix A to Subpart E of Part 1040—DOE Federally Assisted Programs Containing Age Distinctions

Statute, Name, Public Law, and U.S. Code	Section and age distinction	Use of age/age related team			Popular name	CFDA No.
		Conditions benefits or assistance	Establishes criteria for participation	Describes beneficiaries or target groups		
Energy Conservation and Production Act, Title IV,	Section 413(a). The Administrator shall develop and			X	Weatherization Assistance Program for	81.042

<p>Part A; Public Law 94-385, 42 U.S.C. 6861-6870</p>	<p>conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Administrator may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d), to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, in which the head of the household is a</p>				<p>Low-Income Persons</p>	
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	low-income person					
Interagency Agreement between the United States Department of Energy and the United States Department of Labor, Interagency Agreement No. 99-9-1656-07-11; Authority: Comprehensive Employment and Training Act of 1978 (CETA) (Pub. L. 95-524, October 27, 1978; 92 Stat. 1909; 29 U.S.C. 801), the Energy Reorganization Act of 1974, as amended (Pub. L. 93-438, October 11, 1974; 88 Stat. 1233), and the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91, August 4, 1977); 91 Stat. 565; 42 U.S.C. 7101)	Interagency Agreement, Section 1, Purpose: "The purpose of this agreement is to provide for a transfer of funds from the Department of Labor, Employment and Training Administration (ETA), Office of Youth Programs (OYP) to the Department of Energy, Directorate of Administration (AD), Office of Industrial Relations (OIR), to fund the Summer Science Student Program (SSSP). The SSSP will grant monies from DOL through DOE/OIR to DOE contractors to fund 480 participant slots for economically disadvantaged youths in an integrated program of career motivation and basic academic skill enrichment.			X	Summer Science Student Program	N/A

	The program is designed to motivate economically disadvantaged and academically talented youths to continue their education and to pursue energy-related careers upon graduation from high school					
Executive Office of the President, Office of Science and Technology Policy, Memorandum, Subject: Research Apprenticeships for Minority High Schoolers, dated October 23, 1979	Quotation from October 23, 1979 memorandum, paragraph 2, “The objectives are to stimulate broader interest in the minority communities in careers in science and engineering and to establish individual working relationships of high school students with active researchers who may become helpful mentors when students need advice on college and careers and need letters of recommendation”			X	Summer Research Apprenticeship Program	N/A

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

Subpart F—Nondiscrimination Under Title VIII of the Civil Rights Act of 1968, as Amended [Reserved]

Subpart G—Program Monitoring

§1040.101 Compliance reviews.

(a) The Director shall periodically conduct compliance reviews of selected recipients of DOE Federal financial assistance.

(b) The Director shall seek to review those recipients which have the most serious equal opportunity problems which cause the greatest disparity in delivery of services on a nondiscriminatory basis. Selection for review is to be made on the basis of the following criteria, among others:

(1) The relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient if employment practices are covered by this part;

(2) The percentage of individuals covered by the Age Discrimination Act of 1975, minorities, women and handicapped persons in the population receiving program benefits.

(3) The number and nature of discrimination complaints filed against a recipient with DOE or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with DOE against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) After selection of a recipient for review, the Director Federally Assisted Programs Division or the Director's designee, shall inform the recipient of the selection. The notice shall be in writing and posted thirty days prior to the scheduled review. The letter will ordinarily request data pertinent to the review and advise the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of DOE's finding, a written submission responding to DOE which explains, validates, or otherwise addresses the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(d) Within 90 days of arriving on-site to conduct the review, the Director, FAPD, shall advise the recipient, in writing, of:

(1) Preliminary findings;

(2) Where appropriate, recommendations for achieving voluntary compliance; and

(3) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or the Director's

designee shall notify the Assistant Attorney General at the same time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(e) If, within 45 days of the recipient's notification under paragraph (d) of this section, the Director's (FAPD) recommendations for compliance are not met, or voluntary compliance is not secured, or the preliminary findings are not shown to be false, the matter will be forwarded to the Director for a determination of compliance or noncompliance. The determination is to be made no later than 60 days after the recipient has been notified of the preliminary findings. If the Director makes a determination of noncompliance, the Department shall institute actions specified in subparts G and H.

(f) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised, in writing, of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under subpart H.

(g) All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

§1040.102 Compliance information.

(a) *Cooperation and assistance.* Each responsible Departmental official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep reports and submit to the responsible Department official or his/her designee, timely, complete, and accurate compliance reports at the times, in such form, and containing information as the responsible Department official or the designee may determine to be necessary to enable him/her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for DOE data on program participants, identified by race, color, national origin, sex, age and handicap status. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit compliance reports to the primary recipient which will enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to books, records, personnel records, accounts, other sources of information, and its facilities, which are pertinent to ascertain compliance with this part. The requirement for access to sources of information shall be contained in the certificate of assurance and agreed to by the recipient as a condition to award. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall certify this in its report and set forth the efforts which it has made to obtain the information. The sub-recipient in such case shall be subject to proceedings described under subpart H of this part.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons information regarding the provisions of this section and its applicability to the program under which the recipient receives Federal financial assistance. Information is to be made available to beneficiaries, participants, and other interested persons in a manner which the responsible Department officials find necessary to inform such

persons of the protections against discrimination assured them by this part and the statutes to which this part applies.

§1040.103 [Reserved]

§1040.104 Complaint investigation.

(a) The Director, FAPD, shall investigate complaints of discrimination that allege a violation of—

(1) Title VI of the Civil Rights Act of 1964, Sec. 16 of the Federal Energy Administration Act of 1974, as amended, or Sec. 401 of the Energy Reorganization Act of 1974;

(2) Title IX of the Education Amendments of 1972, as amended;

(3) Section 504 of the Rehabilitation Act of 1973, as amended;

(4) Age Discrimination Act of 1975, as amended, (reserved in this part);

(5) Title VIII of the Civil Rights Act of 1968, as amended, (reserved in this part);

(6) This part; and

(7) Civil rights provisions of statutes administered pursuant to the DOE Organization Act, Pub. L. 95-91.

(b) No complaint will be investigated if it is received by an appropriate Departmental official more than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Director, FAPD, for good cause shown. Where a complaint is accepted for investigation, the Director, FAPD, will initiate a DOE investigation. The Director, FAPD, who is responsible for the investigation, shall notify the complainant, in writing, if the complaint has been accepted or rejected.

(c) The Director, FAPD, or his/her designee shall conduct investigations of complaints as follows:

(1) Within 35 days of receipt of a complaint, the Director, FAPD, shall:

(i) determine whether DOE has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is not found, wherever possible, refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(iii) If jurisdiction is found, notify the recipient alleged to be discriminating of receipt of the complaint; and

(iv) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint and, with the written consent of the complainant, the identity of the complainant. The identity of the complainant may be revealed by the Director, FAPD, OEO, without the complainant's written consent if the Director, FAPD, OEO, determines that such action is necessary for resolution of the complaint;

(ii) The program or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of DOE's findings, a documentary submission responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance made.

(3) Within 90 days of initiating the investigation, the Director, FAPD, shall advise the recipient, in writing of:

(i) Preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance; and

(iii) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or the Director's designee shall notify the Assistant Attorney General and the recipient of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 45 days of the recipient's notification under paragraph (c)(3) of this section, the Director's (FAPD) recommendations for compliance are not met, or voluntary compliance is not secured, or the preliminary findings are not shown to be false, the matter will be forwarded to the Director, OEO, for a determination of compliance or noncompliance. The determination is to be made no later than 60 days after the recipient has been notified of the preliminary findings. If the Director makes a determination of noncompliance, the Department shall institute actions specified in subpart H.

(5) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised, in writing, of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under subpart H. All agreements to come into voluntary compliance shall be in writing and signed by the Director, OEO, and an official who has authority to legally bind the recipient. The complainant shall also be notified of any action taken including the closing of the complaint or achievement of voluntary compliance.

(6) If the complainant or party other than the Attorney General has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to DOE, and if during DOE's investigation, the trial of that suit would be in progress, DOE will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination against a recipient that would constitute a violation of this part, the DOE may institute administrative proceedings as specified in subpart H after DOE has advised the recipient, in writing, of an opportunity to request voluntary compliance under this section. All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c)(1) through (c)(6) of this section shall be appropriately adjusted where DOE requests another Federal agency to act on the complaint. DOE is to monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, DOE is to institute appropriate proceedings as required by this part.

(d) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws implemented in this part or because the complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants is to be kept confidential except as determined by the Director, FAPD, to be necessary to carry out the purpose of this subpart, including investigations, hearings, or judicial proceedings arising thereunder.

Subpart H—Enforcement

MEANS OF EFFECTING COMPLIANCE

§1040.111 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this part may be effected by the suspension, termination of, or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to:

(a) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law including the Civil Rights Act of 1964, other statutes to which this part applies, or any assurance or other contractual undertaking; and

(b) Any applicable proceeding under State or local law.

§1040.112 Noncompliance with assurances.

If an applicant fails or refuses to furnish an assurance required under §1040.4 of subpart A of this part, or otherwise fails or refuses to comply with a requirement imposed by this part, such as §1040.102(c), subpart G of this part, action to refuse Federal financial assistance shall be taken in accordance with procedures of §1040.114 of this subpart.

§1040.113 Deferral.

DOE may defer action on pending applications for assistance in such a case during pendency of administrative proceedings under §1040.114 of this subpart.

§1040.114 Termination of or refusal to grant or to continue Federal financial assistance.

No order suspending, terminating, or refusing to grant or continue Federal financial assistance is to become effective until:

(a) Informational notice of the proposed order is given to the Executive Assistant to the Secretary, if the action is contemplated against a State or local government;

(b) The Director has advised the applicant or recipient of his/her failure to comply and has determined that compliance cannot be secured by voluntary means. (It will be determined by the Director that compliance cannot be secured by voluntary means if it has not been secured within the time periods specifically set forth by this part.)

(c) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or under this part:

(d) The FERC has notified the Secretary of its finding of noncompliance; and

(e) The expiration of 30 days after the Secretary or a designee has filed with the committee of the House of Representatives and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend, terminate, or to refuse to grant or to continue Federal financial assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

§1040.115 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director, in writing, that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

OPPORTUNITY FOR HEARING

§1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by §1040.113, the Director, OEO, or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his/her right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this part;

(3) Specify the issues;

(4) State that compliance with this part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer with the Director, OEO, to the notice of opportunity for hearing under oath or affirmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek review by the FERC in accordance with the provisions established by the FERC. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he/she does not request a hearing.

(c) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing. The order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him/her of a right to:

(1) A hearing under Sec. 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401 and §1040.113;

(2) Findings of fact and conclusions of law; and

(3) Seek review by the FERC.

(d) The failure of an applicant or recipient to file an answer within the period prescribed or, if the applicant or recipient requests a hearing, his failure to appear at the hearing shall constitute a waiver by him/her of a right to:

(1) A hearing under Section 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401, and §1040.113;

(2) Conclusions of law; and

(3) Seek review by the FERC.

In the event of such a waiver, the Secretary or a designee may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(e) An order entered in accordance with paragraph (c) or (d) of this section shall constitute the final decision of DOE unless the FERC, within forty-five (45) days after entry of the order, issues a subsequent decision which shall then constitute the final decision of DOE.

(f) A copy of an order entered by the FERC official shall be mailed to the applicant or recipient and to the complainant, if any.

§1040.122 Request for hearing or review.

Whenever an applicant or recipient requests a hearing or review in accordance with §1040.121(a)(1) or (b), the DOE General Counsel or his/her designee shall submit such request along with other appropriate documents to the FERC.

§1040.123 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued to implement the requirements of the laws cited in this part, the Secretary or a designee, in coordination with FERC may, by agreement with other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with this part. Final decision in such cases, insofar as programs subject to this part are concerned, shall be made in accordance with procedures established by the FERC.

§1040.124 Responsibility of the Federal Energy Regulatory Commission.

The FERC has authority under section 402(b) of the DOE Organization Act, Pub. L. 95-91, to promulgate regulations regarding the conduct of hearings to deny or terminate Federal financial assistance. Rules for conduct of hearings will be published by the FERC and will be placed in title 18 CFR.

JUDICIAL REVIEW

§1040.131 Judicial review.

Final DOE actions taken under this part to withhold or terminate Federal financial assistance are subject to judicial review under the following laws:

- (a) Title VI—Section 603 of the Civil Rights Act of 1964;
- (b) Title IX—Section 903 of the Education Amendments of 1972;
- (c) Section 16, Section 401, Section 504—Pub. L. 89-554, 5 U.S.C. 702;
- (d) Section 419 and Section 420 of the Energy Conservation and Production Act of 1976, as amended.

Appendix A to Part 1040—Federal Financial Assistance of the Department of Energy to Which This Part Applies

1. *Access permits.* Atomic Energy Act of 1954, as amended, Sections 1, 2, 3 and 161(i), Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2011-13, 2201; and Title I Section 104(c) of the Energy Reorganization Act of 1974, Public Law 93-438; 88 Stat. 1237; 42 U.S.C. 5814; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

2. *Motion pictures film libraries.* Atomic Energy Act of 1954, as amended, Public Law 83-703, Sections 3 and 141(b), (68 Stat. 919), 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974, Public Law 93-438, Title I, Sections 103 and 107, (88 Stat. 1240), 42 U.S.C. 5817; Department of Energy Organization Act, Public Law 95-91, Title I, Section 102, and Title III, Section

301, (19 Stat. 565), 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Public Law 95-39, (91 Stat. 191), 42 U.S.C. 7001.

3. *Granting of patent licenses.* Atomic Energy Act of 1954, as amended, Sections 156 and 161(g); Public Law 83-703; 68 Stat. 919, 42 U.S.C. 2186 and 2201; Federal Nonnuclear Energy Research and Development Act of 1974; Section 9(f)(g)(h); Public Law 93-577; 88 Stat. 1887; 42 U.S.C. 5908(f)(g)(h); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

4. *University Laboratory Cooperative Program.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

5. *Facility training institutes, short courses, and workshops on energy and environmental subjects.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; 42 U.S.C. 7101; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

6. *Reactor sharing and fuel assistance.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b), Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

7. *Traineeships for graduate students in energy related fields.* Atomic Energy Act of 1954, as amended, Sections 31 (a) (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93-409, Section 12(a); Public Law 94-163, Section 337; Public Law 93-577, Section 4(d); Public Law 93-275, Section 5; Public Law 95-39, Title V, Section 502(7); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

8. *Energy related laboratory equipment grants.* Atomic Energy Act of 1954, as amended, Section 31 (a) and (b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

9. *Information services exhibits, public speakers publications, reference and analysis.* Atomic Energy Act of 1954, as amended, Section 3 and 141b; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2013 and 2161; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

10. *Payments in lieu of property taxes.* Atomic Energy Act of 1954, as amended, Section 168; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2208; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95-91.

11. *Radiological emergency assistance.* Atomic Energy Act of 1954, as amended, Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2011 *et seq.*; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

12. *Nuclear industry seminars.* Atomic Energy Act of 1954, as amended, Section 141(b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2161, and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

13. *Work experience.* Atomic Energy Act of 1954, as amended, Section 3, Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2013; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95-91.

14. *Citizens: Workshops.* Atomic Energy Act of 1954, as amended, Public Law 83-703, Section 3 and 141(b), 68 Stat. 919; 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974; Public Law 93-438, Title I, Section 103 and 107, 88 Stat. 1240; 42 U.S.C. 5817, Department of Energy Organization Act, Public Law 95-91, Title I, Section 102, and Title III, Section 301, 91 Stat. 565; 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Public Law 95-39, 91 Stat. 191; 42 U.S.C. 7001.

15. *Research and development in energy conservation.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

16. *Energy related inventions.* Section 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974; Public Law 93-577; 68 Stat. 1894; 42 U.S.C. 5913; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

17. *Research and development fission, fossil, solar, geothermal, electric and storage systems, magnetic fusion.* Amendments to the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

18. *Energy Information Administration Clearinghouse (EIAC).* Department of Energy Organization Act, Section 205; Public Law 95-91.

19. *National Energy Information Center (NEIC).* Federal Energy Administration Act of 1974, as amended, Section 20(a)(4); Public Law 93-175; 15 U.S.C. 779; Department of Energy Organization Act, Section 301; Public Law 95-91.

20. *Grants for Offices of Consumer Services.* Title II, Section 205 of the Energy Conservation and Production Act, Public Law 94-385; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

21. *State Energy Conservation Program.* Title III, Sections 361-366, Part C of the Energy Policy and Conservation Act, Public Law 94-163; 42 U.S.C. 6321-6326; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

22. *Weatherization Assistance Program for low income persons.* Title IV, Part A of the Energy Conservation and Production Act, Public Law 94-385; 42 U.S.C. 6861-6870; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

23. *Supplemental State Energy Conservation Program.* Title IV, Section 432(a), Part B of the Energy Conservation and Production Act of 1976, Public Law 94-385; 42 U.S.C. 6801 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

24. *Public education in energy.* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93-409, Section 12(a); Public Law 94-163, Section 337; Public Law 93-577, Section 4(d); Public Law 93-275, Section 5; Public Law 95-39, Title V, Section 502(7); Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

25. *Special studies and projects in energy education and training.* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Public Law 93-409, Section 12(a); Public Law 93-163, Section 337; Public Law 93-577, Section 4(d); Public Law 93-275, Section 5; Public Law 95-39, Title V, Section 502(7).

26. *Research and development in biomedical and environmental sciences.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

27. *Preface (Pre-Freshman and Cooperative Education for Minorities In Engineering).* Atomic Energy Act of 1954, as amended, Sections 31(a) and 31(b); Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107 of the Energy Reorganization Act of 1974; Public Law 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, Public Law 95-91, Sections 102 and 203; Public Law 93-409, Section 12(a); Public Law 94-163, Section 337; Public Law 93-577, Section 4(d); Public Law 93-275, Section 5; Public Law 95-39, Title V, Section 502(7).

28. *Materials allocation.* Section 104, Energy Policy and Conservation Act (EPCA), Section 101(c) Defense Production Act of 1950, as amended (DPA), 50 U.S.C. 2071(c), Section 7, Executive Order 11912, April 13, 1976. Defense Mobilization Order No. 13, September 22, 1976, 41 FR 43720; Department of Commerce, Bureau of Domestic Commerce, Delegation 4, 41 FR 52331, MA Regulations 10 CFR 216; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

29. *Basic energy sciences, high energy and nuclear physics, and advanced technology and assessment projects.* Atomic Energy Act of 1954, as amended, Section 31; Public Law 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Public Law 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Public Law 95-91.

30. *Energy Extension Service.* National Energy Extension Service Act; Title V, Public Law 95-39; Department of Energy Organization Act, 42 U.S.C. 7101; Public Law 95-91.

Appendix C.

10 C.F.R. Part 1042, *Non-Discrimination on the Basis of Sex in Education Programs or Activities*

PART 1042—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 42 U.S.C. 7101 *et seq.*; and 50 U.S.C. 2401 *et seq.*

SOURCE: 66 FR 4630, Jan. 18, 2001, unless otherwise noted.

Subpart A—Introduction

§1042.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) 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 these Title IX regulations. The effective date of these Title IX regulations is February 20, 2001.

§1042.105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Department of Energy, or by a recipient, as a condition to becoming a recipient of Federal financial assistance.

Designated agency official means the Director, Office of Civil Rights and Diversity or any official to whom the Director's functions under this part are relegated.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681-1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93-568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94-482, 90 Stat. 2234, and by Section 3 of Public Law 100-259, 102 Stat. 28, 28-29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth in this 10 CFR Part 1042.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an

educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§1042.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of February 20, 2001:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§1042.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, the Department of Energy must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with §1042.110(a) to eliminate existing discrimination on the basis of sex or to eliminate

the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, 1685-1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§1042.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§1042.205 through 1042.235(a).

§1042.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§1042.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§1042.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§1042.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§1042.300 through 1042.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to §1042.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of February 20, 2001 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§1042.200 Application.

Except as provided in §§1042.205 through 1042.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§1042.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§1042.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§1042.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§1042.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§1042.225 and 1042.230, and §§1042.300 through 1042.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§1042.300 through 1042.310.* Except as provided in paragraphs (d) and (e) of this section, §§1042.300 through 1042.310 apply to each recipient. A recipient to which §§1042.300 through 1042.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§1042.300 through 1042.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§1042.300 through 1042.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§1042.300 through 1042.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§1042.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§1042.300 through 1042.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§1042.300 through 1042.310.

§1042.230 Transition plans.

(a) *Submission of plans.* An institution to which §1042.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §1042.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§1042.300 through 1042.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §1042.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§1042.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity or program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other post-secondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other post-secondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are

part of a “program or activity” subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§1042.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§1042.300 through 1042.310 apply, except as provided in §§1042.225 and 1042.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§1042.300 through 1042.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§1042.300 through 1042.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to §1042.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.” A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§1042.305 Preference in admission.

A recipient to which §§1042.300 through 1042.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§1042.300 through 1042.310.

§1042.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§1042.300 through 1042.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to §1042.110(a), and may choose to undertake such efforts as affirmative action pursuant to §1042.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§1042.300 through 1042.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§1042.300 through 1042.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§1042.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 1042.400 through 1042.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§1042.300 through 1042.310 do not apply, or an entity, not a recipient, to which §§1042.300 through 1042.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§1042.400 through 1042.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§1042.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§1042.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§1042.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from February 20, 2001. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from February 20, 2001.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§1042.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§1042.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§1042.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and §1042.450.

§1042.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§1042.500 through 1042.550.

§1042.440 Health and insurance benefits and services.

Subject to §1042.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§1042.500 through 1042.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§1042.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to §1042.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by

the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§1042.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from February 20, 2001. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from February 20, 2001.

§1042.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§1042.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§1042.500 through 1042.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§1042.500 through 1042.550 apply to:

- (1) Recruitment, advertising, and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§1042.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§1042.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§1042.500 through 1042.550.

§1042.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§1042.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in §1042.550.

§1042.525 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of §1042.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§1042.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to §1042.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual

of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§1042.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§1042.500 through 1042.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§1042.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§1042.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§1042.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§1042.500 through 1042.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Other Provisions

§1042.600 Covered programs.

The financial assistance programs to which this part applies are listed in Appendix A to 10 CFR part 1040.

§1042.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR part 1040, subparts G and H.

Appendix D.

Reserved for FERC Hearing Rules and/or Regulations