

Department of Energy

§ 1040.89–13

(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.

§ 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, OEO, 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.

§ 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 program or activity.

§ 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, OEO, 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

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(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.

APPENDIX A TO SUBPART E OF PART
1040—DOE FEDERALLY ASSISTED
PROGRAMS CONTAINING AGE DISTINC-
TIONS