

§ 1040.89-8

10 CFR Ch. X (1-1-03 Edition)

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, OEO.

(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, OEO, 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.

§ 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, which calls for—

(1) Termination of a recipient's Federal financial assistance from DOE

under the program or activity involved where 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, OEO, 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 Federal 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.

Department of Energy

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(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