

## Department of Energy

## § 1040.89-6

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

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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

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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.