

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,

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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.