



NASA Procedural Requirements

COMPLIANCE IS MANDATORY FOR NASA EMPLOYEES

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Subject: Nondiscrimination in Federally Assisted and Conducted Programs

Responsible Office: Office of Diversity and Equal Opportunity

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Chapter 2. NASA Assisted Programs and Activities

2.1 Complaint Procedures

2.1.1 Complaint Receipt.

2.1.1.1 A complaint alleging discrimination under one or more of the following authorities pertaining to programs and activities receiving NASA financial assistance: Civil Rights Act of 1964, Title VI, The Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d, Education Amendments of 1972, Title IX, The Education Amendments Act of 1972, Title IX, 20 U.S.C. §§ 1681, et seq., 29 U.S.C. § 701 et seq., or 42 U.S.C. §§ 6101, et seq., may be submitted or filed with any NASA Agency or Center office or ODEO.

Note: The same complaint procedures apply for complaints under authorities regarding conducted programs of NASA, including 29 U.S.C. § 701 et seq., 29 U.S.C. § 794d, and E.O. 13160. These authorities are addressed in more detail in ch. 3. ¹

¹ This directive is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This directive is not intended, however, to preclude judicial review of final decisions in accordance with The Administrative Procedure Act, 5 U.S.C. § 701, et seq.

2.1.1.2 The receiving official at a NASA Center or Agency office other than ODEO will indicate the receipt date on the complaint upon the date received and refer the complaint to ODEO within 5 days of receipt.²

² Unless otherwise stated, all days are calendar days.

a. If ODEO receives the complaint from a NASA Center or Agency office, the receipt date of the complaint is the postmarked date or the email time-stamped date on the complaint. The email timestamp date is the date and time zone the complaint was received by the NASA office, not the date and time zone sent by the complainant or received by ODEO.

b. If ODEO receives the complaint directly from the complainant, the receipt date is the postmarked or email time-stamped date on the complaint.

c. If ODEO receives the complaint from another Federal agency, the receipt date is the date the complaint was received by the other Federal agency.

2.1.1.3 In order to be accepted, all complaints need to include sufficient information to identify and contact the complainant, including the following information:

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- a. a way to contact the complainant;
- b. the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination;
- c. the respondent, i.e., identification of the person or institution alleged to have discriminated against the complainant; and
- d. sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place.

2.1.1.4 Correspondence pertaining to complaints will be made available in a format(s) accessible for persons with disabilities, as appropriate.

2.1.1.5 Upon receipt by ODEO, the incoming complaint is assigned a case number and a case file for documents pertaining to the complaint is established

2.1.2 Complaint Acknowledgement.

2.1.2.1 The Director, EOPD, shall acknowledge receipt of the complaint by a written acknowledgement to the complainant within 30 days of complaint receipt and will:

a. Notify the respondent of ODEO's receipt of the complaint concurrent with the complainant's acknowledgement letter. (For purposes of this NPR, the term "respondent" denotes the institution receiving NASA financial assistance, for example, a college or university, or the NASA Center or organization, e.g., Mission Directorate, against whom discrimination is being alleged in a complaint.) See also App. A. Definitions.

b. Forward a copy of the complete complaint to the respondent.

c. State that ODEO will evaluate the complaint for timeliness and jurisdiction.

2.1.2.2 Where the Director, EOPD, determines that a complaint is incomplete, the acknowledgement letter will advise the complainant of the information needed to complete the complaint.

2.1.2.3 The Director, EOPD, shall require the complainant to submit the requested information within 45 days of the date of receipt of the acknowledgement letter sent by registered mail (see paragraph 2.1.3.5 for "Gathering Basic Information").

2.1.2.4 If a complainant does not respond to the request for information necessary to complete the complaint within the allowed 45 days, the AA, ODEO, shall administratively close the complaint.

2.1.2.5 If the AA, ODEO closes an incomplete complaint for lack of a response from the complainant, the AA, ODEO shall notify the complainant and the respondent of the closure in writing within 30 days of complaint closure.

2.1.3 Complaint Evaluation.

2.1.3.1 ODEO's objective is to complete the complaint evaluation within 60 days of complaint receipt. If the Director, EOPD, determines additional time is needed to complete its complaint evaluation, ODEO will notify the complainant and provide a specific timeframe for completion of the evaluation.

2.1.3.2 The Director, EOPD, shall review each complaint to determine whether it is complete; timely filed; states a claim and is within NASA jurisdiction; subject to the authorities enforced by NASA; that the complainant has standing; and whether the complaint will be resolved through such means as investigation, or an attempt at early resolution (See paragraph 2.1.4).

2.1.3.3 The AA, ODEO shall:

a. Make an appropriate referral of any complaints that are not within NASA jurisdiction or which are the subject of concurrent jurisdiction with another Federal, state, or local agency within 15 days of the determination for referral, which shall be within the 60 days complaint evaluation period.

b. Notify the complainant and respondent of the referral in writing at the time the referral is forwarded to the appropriate agency. c. Ensure that all complaints accepted for processing are first addressed through an opportunity for Early Complaint Resolution (ECR), a form of resolution between the parties, e.g., mediation, before a formal investigation is initiated (see paragraph 2.1.4.1).

2.1.3.4 Timeliness Evaluation.

a. To be timely, complaints filed under authorities covered under this NPR are required to be filed within 180 days from the date of the alleged discrimination. ³

³ 14 CFR § 1250.106(b).

b. The exception to the 180 days timely filing is complaints alleging violations of 29 U.S.C. § 794d pertaining to closed captioning of video programming. To be timely, the complaint is required to be filed within 60 days from the date the person knew or should have known of the alleged discrimination.

c. Timely complaints include those where the complaint alleges a continuing discriminatory policy or practice. ODEO retains the authority to waive the timeliness requirement when it finds that good cause is shown. DOJ regulations state that "the Agency may exercise its discretion and accept a complaint filed later in time" then the Agency's regulatory timeframe allows, in accordance with Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs, 28 CFR pt. 42, subpt. F.

d. If a complaint is not filed in a timely manner, the AA, ODEO may grant a waiver of the applicable time period for filing under any of the following circumstances:

(1) The complainant was unable to file a complaint because of extenuating circumstances, e.g., illness of the complainant, during the applicable time period, and the complaint was filed within 60 days after the period of illness or incapacitation ended.

(2) The complainant filed a complaint alleging the same discriminatory conduct within the applicable time period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with NASA within 60 days after the other agency has completed its investigation or notified the complainant that it would take no further action.

(3) The complainant filed, within the applicable time period, an internal grievance alleging the same discriminatory conduct that is the subject of the NASA complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.

(4) Unique circumstances generated by agency action have adversely affected the complainant.

e. If a waiver is not requested or is requested but not granted, the case will be closed and the complainant informed of the decision and appeal rights, as appropriate.

2.1.3.5 Gathering Basic Information. The Director, EOPD, examines other sources of information (e.g., statistical data or respondent information) to ensure that it has sufficient information to evaluate complaints appropriately, including:

a. Providing appropriate assistance to complainants, including persons with disabilities and individuals who, as a result of national origin, are limited in their English proficiency, and who may therefore need help in providing information that NASA needs to process the complaint. This includes foreign nationals with updated visa information and naturalized citizens who are currently working on a NASA research award or awards and who may need help in providing information that NASA needs.

b. Contacting the complainant by telephone or other appropriate means, such as email, to obtain missing necessary information and place a record of contact summarizing the conversation in the case file. In the alternative, ODEO will inform the complainant in writing of the information needed.

(1) If the necessary information is not provided within 30 days of the date of the notification letter, the AA, ODEO will close the complaint and so inform the complainant.

(2) In cases where the complainant raises more than one claim and the complainant has provided sufficient information on one or more but not all claims, only those claims for which the complainant has provided sufficient information will be processed. The complainant will be notified of the status of all the complaints.

2.1.3.6 Jurisdictional and Issue/Subject Matter Analysis.

a. In developing a recommendation to the AA, ODEO on subject matter jurisdiction of the complaint, the Director, EOPD identifies the specific form of alleged prohibited discrimination based on the protected classification and relevant authority, to include: race, color, national origin in federally assisted programs described in 42 U.S.C. § 2000d, sex in educational programs receiving federal financial assistance described in 20 U.S.C. §§ 1681, disability in federally assisted or conducted programs per 29 U.S.C. § 701 et seq., age in federally assisted programs described in 42 U.S.C. §§ 6101, et seq., comparable access to electronic and information technology for individuals with disabilities described 29 U.S.C. § 794d, or race, color, national origin, sex, disability, age, religion, sexual orientation, or status as a parent in federally conducted education or training programs, per E.O. 13160.

b. In identifying the subject matter, the Director, EOPD looks for allegations of one or more of the following:

- (1) Any difference in the quality, quantity, or manner in which a service or benefit is provided.
- (2) Segregation in any part of a program or separate treatment in any manner.
- (3) Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program.
- (4) Different standards or requirements for participation or entry.
- (5) Separate treatment in any manner related to receipt of services or benefits.
- (6) Restriction of the membership of advisory or planning councils that are an integral part of federally funded programs.
- (7) Failure to accommodate the language needs of a limited-English-proficient person(s) (LEP).
- (8) Failure to adequately advise person(s) in the eligible population of the existence of services or benefits.
- (9) Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would impact more heavily based on a protected classification.
- (10) Discrimination in any aspect of employment.
- (11) Failure to provide reasonable accommodation to a qualified individual with a disability.
- (12) Failure to provide comparable access to electronic or information technology to an individual with a disability.
- (13) Other regulatory non-compliance, e.g., failure to designate a responsible official, failure to establish internal procedures for discrimination complaints.
- (14) Any other alleged discriminatory act or failure to act that NASA deems appropriate for evaluation.

2.1.3.7 Determining Not to Proceed Further. There are a variety of reasons why the AA, ODEO may not proceed further with complaint allegations. Several of these reasons are described below but this is not an exclusive list.

Note: These reasons apply to individual, as opposed to class complaints, unless so stated:

- a. The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same respondent or other respondents that repeatedly have been found factually or legally insubstantial by NASA, such as failure to state a claim.
- b. The same allegations and issues of the complaint have been addressed in a closed NASA complaint or compliance review.
- c. The complaint has been investigated by another agency and the resolution of the complaint is determined to meet NASA standards and requirements as described in this NPR.
- d. The complaint allegations are foreclosed by previous decisions by Federal courts, the Secretary of Education, the Civil Rights Reviewing Authority, or NASA policy determinations.
- e. The complainant decides to withdraw the complaint. If the complaint included class allegations, the AA, ODEO may:
 - (1) Close the entire complaint.
 - (2) Pursue resolution of the class allegations.
 - (3) Use the information to target future compliance review activity.
- f. The AA, ODEO obtains information indicating that the allegations raised by the complaint have been resolved. In such cases, the AA, ODEO will attempt to confirm the resolution. If the AA, ODEO determines there are no current allegations appropriate for further resolution, the complaint will be closed.
- g. Litigation has been filed raising the same allegations previously filed in other complaints. Such cases may be refiled within 60 days following termination of the proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)
- h. The same complaint allegations have been filed with another Federal, state, or local agency, or through a respondent's internal grievance procedures, including due process proceedings, and the AA, ODEO anticipates that

the Agency will provide the complainant with a comparable resolution process. The complainant will be advised to refile within 60 days of the completion of the other agency's action. (ODEO does not complete a de novo review of the case.)

- i. The AA, ODEO obtains information that the complaint allegation is moot, and there are no class allegations. If there are class allegations, ODEO may proceed in accordance with Section 2.1.3.7(e), above.
- j. The AA, ODEO determines that ODEO's ability to complete the investigation is being substantially impaired by the complainant's or injured party's refusal to cooperate.

(1) In such a case, the complainant or injured party will be contacted as soon as possible so the investigation may proceed.

(2) If this does not resolve the matter, the AA, ODEO will inform complainant or injured party, explaining why the failure to cooperate (including refusal to give permission to disclose identity) has made it impossible to investigate the complaint.

(3) Refusal to cooperate within 30 days of the date of the letter will result in the AA, ODEO closing the case.

k. A complaint over which NASA otherwise has jurisdiction, when the AA, ODEO transfers or refers the complaint to another agency for investigation based on that's agency's jurisdiction over the complaint.

l. The death or incapacity of the complainant or injured party makes it impossible to investigate the allegations fully.

2.1.3.8 Determining to Treat a Complaint as a Compliance Review. Some complaints, because of their scope and nature, may require a large amount of resources. In such instances, the Director, EOPD will consider treating such a complaint as a matter appropriate for a compliance review (See paragraph 2.2, Compliance Reviews) based on the following:

- a. A determination that a compliance review is the most effective means of addressing multiple individual complaints against the same recipient.
- b. Any outstanding individual allegations that cannot be promptly resolved are to be incorporated into the review.

2.1.3.9 Notifying the Complainant and Respondent of Evaluation Determinations.

a. If the AA, ODEO, based on a recommendation from the Director, EOPD, decides to proceed with complaint processing, the evaluation letters to the complainant and the respondent will be signed by the AA, ODEO and will contain:

(1) The basis for the complaint.

(2) A brief statement of the allegations over which NASA has jurisdiction and NASA's overall jurisdiction over the complaint..

(3) An indication of when the parties will be further contacted.

(4) An offer to engage in ECR to resolve the complaint (see paragraph 2.1.4).

b. If the complaint does not proceed to complaint resolution, the letter to the complainant (and respondent) will be signed by the AA, ODEO and will state:

(1) The complaint is being closed, explain the reason for the decision, and provide notice of appeal rights, as appropriate.

(2) If the complainant has questions or concerns about ODEO's evaluation determination, the complainant may contact ODEO to verify the appropriateness of the complaint evaluation.

(3) ODEO encourages the complainant to address these concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case.

c. A complainant alleging discrimination prohibited by the Age Discrimination Act of 1975 may file a civil action in Federal court only after exhausting administrative remedies. Administrative remedies are exhausted upon the earlier of either of the following:

(1) 180 days have elapsed since the complainant filed the complaint with ODEO, and ODEO has made no finding with regard to the complaint.

(2) ODEO issues a finding in favor of the respondent. If the AA, ODEO issues a finding in favor of the respondent, the AA, ODEO shall promptly notify the complainant and provide additional information regarding the complainant's

right to file a civil action.

2.1.4. ECR Efforts. The Director, EOPD conducts ECR, which involves resolution between the parties, e.g., mediation, without formal investigation, activities in processing of complaints pertaining to NASA assisted programs.

2.1.4.1 Pursuing Resolution Through ECR.

a. Before undertaking a formal investigation, the AA, ODEO, through the Director, EOPD, pursues resolution through ECR of all complaints over which NASA has jurisdiction, if both parties agree to ECR.

b. ECR is not offered to the complainant where there is a legitimate reason why ECR is not appropriate for a particular case; such reason is to be reduced and maintained in the file. ECR is not offered when:

- (1) When violence is alleged;
- (2) There is evidence that one of the parties is acting in bad faith, e.g., when one party mainly seeks delay or appears to be using the process for discovery;
- (3) Certain types of harassment are involved, e.g., threatened violence, stalking;
- (4) Where the complainant has filed multiple complaints in the past in which resolution efforts have been unsuccessful;
- (5) Situations where options are dictated or limited by law.

c. The AA, ODEO advises the complainant of the opportunity for ECR where both parties agree and ODEO deems the matter appropriate for resolution efforts, e.g., mediation.

d. The AA, ODEO sets forth a brief explanation of the processes for ECR and requests that each party indicate in a written response whether it consents to participate and the respondent's rationale if it chooses not to consent. The respondent will provide its rationale if it chooses not to consent. The complainant does not have to provide its rationale and may simply reject the offer in response.

(1) If the AA, ODEO has not received a response within 10 days from a party, it contacts the nonresponding party by telephone or other appropriate means to determine the party's willingness to participate in ECR proceedings.

(2) If the AA, ODEO cannot obtain written consent from both parties to participate in ECR within 20 days after the AA, ODEO has forwarded the complaint evaluation letter, the AA, ODEO, through the Director, EOPD, initiates a formal investigation.

e. If a resolution through ECR efforts cannot be reached within 45 days after the AA, ODEO has forwarded the complaint evaluation letter, or if efforts to achieve an informal resolution are futile, the AA, ODEO, through the Director, EOPD, initiates a formal investigation.

f. If the AA, ODEO, through the Director, EOPD, determines that further ECR efforts may result in a timely resolution to the case (at any time after a formal investigation has been initiated), efforts to achieve case resolution through ECR may be resumed.

g. Once resolution of any allegation has been obtained, the AA, ODEO may close that portion of the complaint; other approaches may be utilized to resolve any outstanding allegations.

h. The Director, EOPD monitors the process of ECR to ensure adequate time for completion of the investigation in the event that ECR is unsuccessful.

i. Where appropriate, investigation will proceed to ensure completion in accordance with normal case processing standards and timelines.

2.1.4.2 The ECR Agreement.

a. Agreements will be in writing and signed by the parties (the person signing for the respondent has authority to bind the respondent).

Note: In the case of federally assisted programs, addressed in ch. 3, "the respondent" is a NASA award recipient institution, such as a college or university; in the case of federally conducted programs, the respondent is NASA.

b. NASA's Office of the General Counsel (OGC) legal review will be conducted prior to the agreement being finalized

to ensure that all legal requirements are met.

2.1.4.3 Complaint Resolution Letters Where the Complaint is Resolved Through ECR.

- a. If the ECR process results in resolution of the complaint, the AA, ODEO shall issue a complaint resolution letter within 10 days after both parties have signed the resolution agreement.
- b. A copy of any agreement between the parties will be attached to the resolution letter.
- c. For all other cases, the allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, will be reflected in the case file and the resolution letter.

2.1.4.4 Monitoring the Agreement. The AA, ODEO shall inform the parties that:

- a. If a breach occurs, the complainant has the right to inform the AA, ODEO that a breach has occurred within 30 days from the date the complainant knew or should have known of the breach.
- b. The Director, EOPD will inquire into the matter and attempt to cure the breach.
- c. If the breach cannot be cured within a reasonable time, the complaint process will be resumed at the point at which it was stopped when the ECR began.

2.1.5 Complaint Investigation.

2.1.5.1 Complainant and Respondent Notification.

- a. Once the AA, ODEO has decided to proceed with investigation of the complaint, it notifies the complainant and the respondent that it has accepted the complaint for investigation.
- b. In complaints that raise limited (usually individual) allegations, the AA, ODEO requests a position statement from the respondent. This is a means for the respondent to offer a complete, detailed response to the allegations.
- c. The Director, EOPD will generally complete all complaint investigations within 180 days after the AA, ODEO forwards notification letters to the complainant and the respondent of its intent to investigate

2.1.5.2 Investigative Plan (IP) Development. Prior to conducting a complaint investigation, the Director, EOPD and the ODEO EOPD investigate staff (ODEO investigator) shall develop an IP to encompass several key activities:

- a. Jurisdictional determination,
- b. Identification of bases and issues,
- c. Complainant and respondent notification,
- d. Identification of applicable theories, information request/data collection, and
- e. Onsite determination and notification.

2.1.5.3 Information Request/Data Collection. The Director, EOPD and the ODEO investigator shall:

- a. Prepare an information/data request letter for the respondent requesting information relevant to the investigation which may be used to initiate information collection or to request additional information after the primary information collection activity has been completed. ⁴

⁴ See NPR 1382.1, NASA Privacy Procedural Requirements; NPR 1600.1, NASA Security Program Procedural Requirements.

- b. Request documentary evidence from the respondent, providing the respondent a reasonable amount of time, for example 45 days, absent a showing of good cause for extension, from the date of ODEO's request to submit information.
- c. Develop interview questions based upon that data and any other available information,
- d. Conduct interviews with the complainant, respondent/agency personnel, and others, as appropriate, and in accordance with Federal law, and
- e. Gather, review, and evaluate all written information pertinent to the case, including records of both the respondent and the complainant.

2.1.5.4 Respondent Requirements and ODEO Access to Respondent Records. The respondent is required to provide access to all books, records, accounts, and other sources of information or facilities that the AA, ODEO finds

necessary to determine compliance per Nondiscrimination in Federally-Assisted Programs of NASA - Effectuation of Title VI of the Civil Rights Act of 1964, 14 CFR pt. 1250.

a. Respondent is required to provide what an employee can supply orally as well as any written information he/she may have that is not maintained elsewhere by the respondent.

b. ODEO access to a respondent's records is guided by the following:

(1) In accordance with Federal law, the ODEO investigator will proceed in accordance with neutral criteria for the selection of the recipient as well as the scope identified for the review, as the reasonableness of such requests is subject to review at later points in the process.

(2) To protect the confidential nature of the records, the respondent may be permitted to use code names and retain a key to the code; however, if at any time such a procedure impedes the timely investigation of the case, unmodified access to records will be needed.

(3) Unless the request is made in the context of an ongoing complaint or compliance review investigation, the respondent will not be required to record information on a "form" or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget. The ODEO investigator may, however, suggest suitable formats to be used at the discretion of the respondent as information collection instruments.

(4) Requests that a respondent provide information, such as interviews and documents, will be reasonable and take into consideration the requirements being placed on the respondent.

(5) If a respondent invites the ODEO investigator to come onsite and collect the requested information and provides ODEO with sufficient access as determined by the AA, ODEO, to files, records, logs, and appropriate indexes to extract the needed information, then the respondent has provided appropriate access.

2.1.5.5 Interviews. The ODEO investigator conducts interviews, takes oral statements, and attempts to obtain independent written documentation to corroborate oral statements.

a. Witness' Right to Representation. The witness' right to representation does not include a general right to have other persons present during the interview. Besides the ODEO investigator, the person being interviewed, and any needed interpreters or other persons required based on disability or LEP, the only other person present during any interview will be the witness' personally designated representative.

(1) If the witness, other than an upper-level manager, identifies the respondent's counsel or a supervisor or manager for the respondent as a personal representative, the ODEO investigator inform the witness that such a person may have a conflict of interest between that person's responsibilities to the respondent and the person's responsibilities as a personal representative.

(2) The ODEO investigator will inform the witness that if a representative with responsibilities to the respondent appears to interfere with the ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness will then be asked again if he/she wishes to have a personal representative and who the witness wishes to have as that representative.

(3) If the witness identifies the same person as the representative and there is no other reason to believe the presence of the identified representative will interfere with the gathering of information, the ODEO investigator will proceed with the interview.

(4) The ODEO investigator will discuss these considerations with the witness prior to scheduling the interview.

b. Interviews with Minors (Persons Under 18) or Legally Incompetent Individuals. Generally, parental or guardian written consent is to be obtained when interviewing any persons under 18 years of age or otherwise legally incompetent, for example, mentally impaired individuals.

2.1.5.6 Investigative Report (IR) and Analysis of the Evidence.

a. The ODEO investigator prepares an IR for all cases investigated.

b. Evidence standing alone does not prove a violation. The evidence must be evaluated against all qualitative and quantitative data gathered, including statistical data and policies and procedures of the respondent and issues under investigation.

2.1.5.7 Letter of Finding (LOF). The AA, ODEO shall issue an LOF not more than 90 days after the completion of an investigation. The findings set forth in the LOF may be one of the following:

a. A Corrected Violation finding (if the AA, ODEO concludes, or the respondent presents adequate documentation

that an alleged violation that existed at the onset of the investigation was corrected prior to the conclusion of the investigation, the LOF will state that an alleged violation was voluntarily corrected by the respondent).

b. A Violation finding accompanied by an agreement for a specific remedial action or actions.

c. A No Violation finding. (See paragraph 2.1.6 regarding the process of issuing Violation and No Violations findings.)

2.1.6 Violation and No Violation Findings. The AA, ODEO shall issue either a Violation or No Violation LOF in accordance with the processes and principles detailed in this section.

2.1.6.1 Violation Findings and Remedial/Corrective Actions.

a. If the AA, ODEO determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient fails to voluntarily correct the violation(s), the AA, ODEO will promptly issue a violation LOF specifying the factual findings and the legal basis for the violation(s) that meets the following requirement:

(1) The Violation LOF is developed by the Director, EOPD and Division staff, with appropriate consultation with OGC, and reviewed and signed by the AA, ODEO.

(2) The draft Violation LOF, and other documentation as appropriate, is shared electronically with the OGC and any other NASA office deemed appropriate by the AA, ODEO.

(3) It is anticipated that this consultation process will be completed within 30 days, or a reasonable period of time not to exceed 45 days.

(4) As soon as concurrence is obtained, the AA, ODEO issues the LOF.

b. The AA, ODEO attempts to ensure that the complainant remains in the same position, or a substantially equivalent position, that he or she would have occupied absent discrimination.

c. Upon a finding of a violation and the issuance of a violation LOF by the AA, ODEO, the respondent is required to sign a corrective or remedial action agreement setting forth the specific corrective or remedial actions to be performed by the respondent and any timeframes in which these actions are to be completed.

Note: The respondent may choose to file a rebuttal. See paragraph 2.1.6.1(e) describing the process to be followed if respondent files a rebuttal.

d. This agreement is signed by the respondent within 20 days of receipt after it has been issued by the AA, ODEO.

e. Respondent Rebuttal to Violation Findings. Where the respondent disagrees with an ODEO finding that the respondent is in violation of NASA regulations, the respondent is required to provide a written analysis in support of its position within 30 days after receiving the LOF, that meets the following requirements:

(1) The respondent's rebuttal includes the following: the specific issue for which the respondent does not agree with the AA, ODEO's finding and a concise statement of the basis for the disagreement, limited to either or both: a procedural defect in ODEO's collection of facts and evidence, or a showing that ODEO's analysis of the facts and evidence was defective, including the application of the legal standards on which ODEO relied to reach its conclusion.

(2) The AA, ODEO responds to the respondent's rebuttal within 60 days after receipt.

(3) If the AA, ODEO agrees with and accepts the respondent's position, the AA, ODEO issues a revised LOF within 60 days after its notice of acceptance.

(4) If the AA, ODEO rejects the respondent's rebuttal, the AA, ODEO notifies the respondent of the rejection and the reasons and re-advise the respondent of its obligation, as set forth in the LOF, as originally presented to the complainant.

(5) Where the respondent issues a rebuttal rejected by ODEO, should the respondent fail or refuse to correct any violation cited in the LOF following ODEO's rejection of its rebuttal, the AA, ODEO notifies the NASA Administrator, the OGC, and the appropriate NASA managers, documenting the basis for its finding and requesting that the Administrator issue a directive to comply.

(6) If ODEO is still unable to obtain voluntary compliance, the AA, ODEO moves to enforcement by either initiating administrative enforcement proceedings or referring the case to the DOJ, in coordination with OGC. ODEO can

move immediately to defer any new or additional Federal financial assistance to the recipient and begin administrative enforcement proceedings to terminate existing Federal assistance. (See paragraph 2.3.)

2.1.6.2 No Violation Findings

a. If a determination is made that there has been no violation of any statutory, regulatory, or Executive Order authority, the AA, ODEO issues a No Violation LOF.

b. The No Violation LOF includes:

- (1) An explanation of why the respondent was found in compliance.
- (2) Notification of a complainant's appeal rights.
- (3) Notification of a complainant's right to file a private right of action (letter to complainant only).
- (4) Procedural violations, such as lack of a posted notice, may be mentioned if uncovered during the investigation.

c. A copy of the LOF will be sent to both the complainant and the respondent.

d. Complainant Appeals. The following requirements apply to complainant appeals:

- (1) An appeal can be filed electronically, by mail, or fax.
- (2) The complainant is required to either submit a completed online appeal form or mail a written statement to ODEO.
- (3) The filing date of an appeal is the date the appeal is postmarked, submitted electronically, or submitted via fax.
- (4) In the appeal, the complainant will explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal.
- (5) An appeal is to be submitted within 60 calendar days of the date indicated on the LOF or the dismissal. A waiver of the 60-day timeframe may be granted where: (a) the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other circumstances; or (b) circumstances generated by ODEO's action that have adversely affected the complainant's ability to submit the appeal timely.
- (6) The AA, ODEO will forward a copy of the complainant's appeal form or written statement to the respondent.
- (7) The respondent has the option to submit to ODEO a response to complainant's appeal.
- (8) Any response to complainant's appeal is required to be submitted to ODEO within 14 days of the date that ODEO forwarded a copy of the complainant's appeal to the recipient.
- (9) The Office of the Administrator issues a written decision on the appeal to the parties within 60 days of complainant's appeal submission, with no further appeal rights within the Agency.

2.1.7 Monitoring and Oversight

2.1.7.1 Following the issuance of a violation finding, the AA, ODEO, through the Director, EOPD, shall monitor and evaluate the respondent's corrective action activities to ensure an outcome that reflects compliance with the corrective action ordered in the LOF or agreed to in a settlement.

2.1.7.2 Monitoring activities are undertaken as outlined in the remedial or corrective action agreement in the following manner:

- a. The AA, ODEO may agree to modify the schedule or the terms of the agreement, if necessary.
- b. Any modifications to the agreement will be appended to the original agreement.
- c. The respondent and the complainant will be notified, in writing, of significant modifications to the agreement and successful completion of the agreement.

2.1.7.3 If a respondent has failed to satisfactorily complete its agreement, the AA, ODEO shall notify the respondent and the complainant promptly in writing of this determination, normally within 30 days of determining that there was a failure to satisfactorily complete its agreement.

2.1.7.4 If ODEO and the respondent are unable to resolve any deficiencies during the implementation of the agreement, the AA, ODEO, shall take appropriate action, including enforcement action. Refer to 20 U.S.C. §§ 1681, et seq., 29 U.S.C. § 701 et seq., 29 U.S.C. § 794d, and 42 U.S.C. §§ 6101, et seq., 42 U.S.C. § 2000d, or a Directive

to Comply pursuant to E.O. 13160.

2.1.7.5 When the respondent completes its program of corrective actions and compliance has been achieved, the AA, ODEO shall notify the Administrator, the General Counsel, and NASA manager(s) or the NASA recipient head (i.e., highest ranking management official, e.g., Chief Executive Officer, President of the University), as appropriate, and the case will be closed.

2.2 Compliance Reviews

2.2.1 Purposes of Compliance Reviews. The purposes of compliance reviews, both pre- and post-award, include, but are not limited to:

2.2.1.1 Identification of deficiencies, such as discriminatory barriers to participation or disparate treatment in participation, in recipients' or prospective recipients' delivery of program services to potential and actual program beneficiaries on the basis of race, color, national origin, sex, disability, or age, in accordance with U.S. Commission on Civil Rights, Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, June 1996 (USCCR Title VI Report), p. 147. This may include, for example, the failure to provide meaningful access to persons who are LEP as described in Improving Access to Services for Persons with Limited English Proficiency, EO 13166, 3 CFR 289 (2000) and guided by NASA LEP policy guidance in accordance with NASA, Title VI of the Civil Rights Act of 1964, as Amended: Policy Guidance on the Prohibition Against National Origin Discrimination as It Affects Persons With Limited English Proficiency, 68 FR 70039 (Dec. 16, 2003).

2.2.1.2 Investigation of allegations of discriminatory barriers to participation or disparate treatment in participation.

2.2.1.3 Evaluation of recipients' or prospective recipients' efforts to provide beneficiaries of notice of civil rights protections, public education, program accessibility, and other regulatory requirements for compliance.

2.2.1.4 Identification of recipients' or prospective recipients' needs for technical assistance or [further] onsite reviews.

2.2.2 Determination of Whether to Conduct a Compliance Review. The Director, EOPD decides whether to conduct a pre- or post-award compliance review of a recipient or prospective recipient based on consideration of:

2.2.2.1 Civil rights research and analysis, including statistical data on demographic composition of program applicants or beneficiaries, initiated and conducted by ODEO.

2.2.2.2 Data and information cited in one or more complaints or other reliable information sources, e.g., information from other Government agencies.

2.2.2.3 The receipt of a significant number of complaints that raise the same or similar issue(s) relating to a particular recipient program or activity.

2.2.2.4 Other legitimate factors and information, including previously filed complaints.

2.2.3 Results of Compliance Reviews.

2.2.3.1 A compliance review results in a compliance report and:

- a. A LOF if there is a compliance violation or violation corrected.
- b. A No Violation LOF if there is no compliance violation.

2.2.3.2 Voluntary Compliance and Conciliation. ODEO engages in voluntary compliance actions, where appropriate, at any stage of the compliance review process, and provides technical assistance to facilitate a voluntary resolution of any noncompliance issues and to help strengthen existing recipient compliance.

2.2.4 Pre-award Compliance Reviews. The NASA Form 1206, Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs serves as an internal screening process, as recommended by DOJ, Civil Rights Division, "Title VI Legal Manual" 42 U.S.C. § 2000d (September 1998), that can raise concerns about a potential or current award recipient. ODEO's utilization of the NASA Form 1206 encompasses the following activities: review of assurances of compliance, collection of data from targeted recipients, and compliance determinations.

2.2.4.1 Reviewing Assurances of Compliance. The AA, ODEO shall require that prospective recipients provide assurances of compliance consistent with DOJ regulations, in accordance with 28 CFR pt. 42, subpt. F, in the following manner:

- a. If an applicant refuses to sign a required assurance, the AA, ODEO recommends that the Agency deny assistance

only after providing notice of the noncompliance, an opportunity for a hearing before the Administrator or his or her designee, and other statutory procedures, consistent with Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 CFR § 50.3.

b. The AA, ODEO need not establish that the applicant engaged in actual discrimination at the administrative hearing. Rather, the AA, ODEO need only show that the applicant refused to sign an assurance of compliance agreeing to comply with statutory and regulatory authorities of this NPR.

2.2.4.2 Data Collection. In addition to submitting an assurance that it will compile and maintain records as required, an applicant is required to provide upon request:

- a. A notice of all lawsuits (for recipients and complainants) filed against it.
- b. A description of assistance applications that it has pending in other agencies and of other Federal assistance being provided.
- c. A description of any civil rights compliance reviews of the applicant during the preceding 2 years.
- d. A statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirements.

2.2.4.3 Compliance Determination. The AA, ODEO shall make a written determination as to whether the applicant is in compliance consistent with 28 CFR pt. 42, subpt. F, based on the following:

a. Where a determination cannot be made from the submitted data, applicant will be required to submit additional information and take other steps necessary for making a compliance determination, which could include communicating with local government officials or community organizations and/or conducting field reviews.

b. Additional information ODEO may request includes, but is not limited to, the following:

(1) Information on the manner in which services are to be provided by the program in question and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination.

(2) Data on the population eligible to be served by race, color, national origin, gender, disability, or age.

(3) Information regarding covered employment, including use or planned use of bilingual

public-contact employees serving beneficiaries of the program, where necessary, to permit effective participation by beneficiaries unable to speak or understand English.

(4) Information on the location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.

(5) Data on the present or proposed membership, by race, color, national origin, sex, disability, and age in any planning or advisory body, which is an integral part of the program.

2.2.4.4 Deferral of the Decision Whether to Grant Assistance

a. Where an assistance application is inadequate on its face, such as when the applicant has failed to provide an assurance or other material required by the Agency, the Administrator shall defer action on the application pending prompt initiation and completion of statutory remedial procedures in accordance with 28 CFR § 50.3.

b. Where the application is adequate on its face but there are "reasonable grounds" for believing that the applicant is not complying with statutory and regulatory authorities identified in this NPR, the Administrator may defer action on the application pending prompt initiation and completion of statutory remedial procedures.

c. When action on an assistance application is deferred, ODEO will conduct remedial efforts to achieve voluntary compliance without delay and complete them as soon as possible.

2.2.4.5 Pre-award Authority of Recipients with Regard to Subrecipients.

a. Recipients are required to obtain assurances of compliance from subrecipients in accordance with 28 CFR § 50.3.

b. When the recipient receives information pre-award that indicates noncompliance by an applicant for a subaward, recipients may defer making the award decision, may seek a voluntary resolution, and, if no settlement is reached (after complying with statutory procedural requirements), may refuse to award assistance.

2.2.5 Post-award Compliance Reviews.

2.2.5.1 Applicable Regulatory Provisions and Guidance.

- a. NASA regulations require the Agency to conduct periodic compliance reviews to assess their compliance in accordance with 14 CFR pt. 1250.
- b. Consistent with 28 CFR pt. 42, subpt. F, the AA, ODEO shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications, applications for continuation or renewal of assistance and all other federally assisted programs.
- c. In carrying out this program, ODEO follows Agency manuals which establish appropriate review, procedures, and standards of evaluation.
- d. The results of post-award reviews are committed to writing and include specific findings of fact and recommendations.
- e. A determination of the compliance status of the recipient reviewed is made as promptly as possible.
- f. Compliance reviews and complaint investigations follow the same guidelines and procedures (See paragraph 2.1).

2.2.5.2 The Director, EOPD shall conduct post-award compliance reviews consistent with the following timeframes.

- a. Issues a notice to the recipient subject to review not less than 60 days prior to the date that the compliance review activities commence.
- b. Advises the recipient of the date on which the compliance review is to commence, the data and information necessary to conduct an efficient and effective compliance review, and the date on which the data and information are to be received by ODEO.
- c. Completes the compliance review within 180 days of the completion of the compliance review investigation, barring extenuating circumstances, such as compliance negotiations with the awardee.

2.2.5.3 Selection of Targeted Recipients. The Director, EOPD selects recipients for compliance reviews based on consideration of neutral criteria that demonstrate the potential impact to address civil rights issues for a targeted recipient, such as the following:

- a. Amount of award funding provided annually.
- b. Geographical diversity among selected recipients.
- c. Issues targeted in ODEO strategic planning documents and other Agency planning documents.
- d. Issues frequently identified as problems faced by program beneficiaries.
- e. Issues raised in a complaint or identified during a complaint investigation that could not be covered within the scope of the complaint investigation.
- f. Issues identified by other Federal, state, or local civil rights agencies.
- g. Issues identified by community organizations or advocacy groups that are familiar with actual incidents to support their concerns.
- h. Issues raised in the news media and confirmed through one or more of (a) – (g) above.

2.2.5.4 Development of a Detailed Compliance Review Plan (CRP). Prior to conducting a compliance review, the Director, EOPD and compliance investigative staff develop a CRP that includes, at a minimum, the bases and issues of the review, and the specific information to be requested from the recipient.

2.2.5.5 Notification Letter to the Recipient. Upon selection of the targeted recipient and completion of the CRP, the Director, EOPD, shall send a notification letter to the head of the recipient institution. The institution's highest EO official of record and the head of the program selected for review will also be notified of NASA's intention to conduct a review.

2.2.5.6 Onsite Interviews. Potential interviewees during the onsite review may include the following:

- a. Recipient officials.
- b. Program beneficiaries, e.g., students, members of the public.
- c. Individuals representing state and local civil rights organizations and local community organizations.

2.2.5.7 Case File Reviews. This investigative activity includes review and evaluation of the recipients complaint files

relevant to the statutory basis for the review, e.g., Title IX.

2.2.5.8 Compliance Review Findings.

a. The AA, ODEO shall notify the recipient and the appropriate NASA Official-in-Charge in writing of the findings of the compliance review within 180 days following the completion of the onsite or desk-audit compliance review investigation. The LOF will identify:

- (1) Each issue investigated during the review.
- (2) The facts and evidence collected and analyzed in relation to each issue.
- (3) The findings of fact and conclusions of laws as related to each issue, including whether or not the Agency is in compliance relative to the issue(s).
- (4) Any actions the Agency will take to remedy any findings of noncompliance as related to the issues.

b. Within a reasonable time, e.g., 90 days, following receipt of the compliance review investigation LOF, the recipient shall be required to provide notice to ODEO of the actions it is undertaking to remedy any findings of noncompliance in accordance with ODEO corrective actions identified.

c. When the AA, ODEO issues an LOF, a copy of the letter will be sent to the appropriate NASA Official-in-Charge, e.g., Center Director or Agency Mission Directorate Associate Administrator.

d. To the extent that the compliance review was initiated in response to complaints, and to the extent appropriate and lawful, ODEO notifies the complainant of the findings of the compliance review and of the actions taken or being taken to remedy the discrimination.

2.3 Enforcement Action

2.3.1 Violation (Noncompliance) Determination.

2.3.1.1 Issuing the Violation LOF. In both the complaints processing and compliance review contexts, if the AA, ODEO determines that the recipient has violated one or more provisions of the civil rights laws:

a. The AA, ODEO shall promptly issue a Violation LOF specifying the factual findings and the legal basis for the violation(s) providing the recipient an opportunity to take the necessary corrective action through voluntary means, for example, a corrective action or voluntary resolution agreement.

b. When the AA, ODEO issues a violation LOF following a compliance review or complaint investigation, ODEO monitors the recipient until compliance has been achieved, with or without a corrective action or voluntary resolution agreement.

c. When all corrective actions are completed, the review or investigation is closed.

d. If the AA, ODEO concludes, or the recipient presents adequate documentation that a violation noted during the review was corrected prior to review completion, the LOF will state that a violation existed at the time of the review, but that it was voluntarily corrected by the recipient.

2.3.1.2 Moving to Enforcement. If the AA, ODEO determines that the recipient remains in violation after an opportunity to establish voluntary compliance, including through a voluntary resolution or corrective action agreement, ODEO will move immediately to enforcement as defined by:

a. Initiating administrative proceedings to suspend, terminate, or refuse to award or continue NASA financial assistance to the recipient.

b. Referring the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

2.3.2 Initiating Administrative Enforcement Proceedings Where Appropriate.

2.3.2.1 Generally, Administrative enforcement proceedings are conducted in accordance with 14 CFR pt. 1250.

2.3.2.2 With regard to 42 U.S.C. §§ 6101, et seq., NASA will refer to the Federal Mediation and Conciliation Service all complaints that fall within the jurisdiction of the Act and its regulations and contain all information necessary for further processing.

2.3.2.3 Notice of Initiation of Administrative Proceeding. If administrative proceedings are initiated, and the recipient has been notified in writing of NASA's intention to impose sanctions, including terminating, deferring, or refusing to

award or continue assistance because of failure to comply, the notice of imposition of sanctions and Notice of Opportunity is issued within 30 calendar days after notification by ODEO that negotiations have been unsuccessful.

2.3.2.4 Requirements Regarding Sanctions. Under NASA regulations, no order suspending, terminating, deferring, or refusing to award or continue Federal financial assistance becomes effective until:

a. The AA, ODEO, has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means, and the AA, ODEO has:

(1) Notified the recipient of its failure to comply and of the action NASA will take to effect compliance.

(2) Provided the recipient at least 10 days from the mailing of the notice before taking action. (During the 10-day period, NASA may make additional efforts to persuade the recipient or other person to comply and to take such corrective action, as may be appropriate.)

b. There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by NASA regulation.

c. The action has been approved by the Administrator pursuant to 14 CFR pt. 1250.

d. The expiration of 30 days after the Administrator has filed with the committee of the House 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.

2.3.2.5 If an administrative proceeding is initiated, a team will be established to prosecute the case.

2.3.3 Referral to the DOJ Where Appropriate.

2.3.3.1 Effecting Compliance. If there appears to be a failure or threatened failure to comply, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance may be affected:

a. By the suspension or termination of or refusal to award or to continue Federal financial assistance.

b. By any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act) or any assurance or other contractual undertaking.

(2) Any applicable proceeding under state or local law.

c. If post-LOF negotiations do not result in an acceptable agreement, the AA, ODEO will notify the NASA Administrator that the office will issue a letter informing the recipient that NASA is recommending enforcement action by DOJ.

2.3.3.2 Consultation with DOJ. The AA, ODEO shall consult with DOJ as appropriate throughout this process.

2.3.3.3 Target Date for Referral. The target date for completion of referral to DOJ is 30 days after the office has notified the NASA Administrator that negotiations have failed.

2.3.4 Moving to Enforcement for Failure to Implement Agreement.

2.3.4.1 Failure to Implement Corrective Action Agreement. Where the recipient has failed to implement its corrective action agreement, it is not necessary to prepare a LOF if findings on the underlying violation have already been made.

2.3.4.2 Determination that Voluntary Compliance Cannot be Achieved. Whenever the AA, ODEO determines that voluntary compliance cannot be achieved, the AA, ODEO shall notify the recipient and prepare a brief information memorandum, including a summary of the recipient's Federal financial assistance, for the AA, ODEO.

2.3.4.3 Recipient Notification. The AA, ODEO shall notify the recipient within 30 days before a notice of an imposition of deferral is issued, if deferral is determined appropriate.

a. The documents provided to the AA, ODEO, may be supplemented by a detailed description of how the recipient has failed to implement its agreement.

b. These documents will be shared electronically with the AA, ODEO.

c. ODEO will provide information to the OGC, as appropriate.

2.3.5 Moving to Enforcement for Denial of Access to Information.

2.3.5.1 Denial of Access to Information. Where the recipient has denied access to information, no LOF is necessary to proceed to enforcement. However, if deferral is contemplated, the recipient shall be notified 30 days before notice of an imposition of deferral can be issued.

2.3.5.2 Notice to Recipient. As soon as the AA, ODEO concludes that the recipient is not voluntarily providing access, the AA, ODEO shall notify the recipient of ODEO's determination and ODEO's intention to recommend enforcement.

- a. ODEO will then prepare a draft letter, which may include notice of NASA's intention to impose deferral, and a brief information memorandum.
- b. These documents are forwarded to the AA, ODEO.
- c. A Notice of Opportunity for Hearing will be issued within 30 days of the decision to move to enforcement.

2.4 Harassment Reporting Requirement Pursuant to a NASA Grant Term and Condition.

2.4.1 Purpose and Effective Date.

2.4.1.1 NASA's terms and conditions (T&C), "Reporting Requirements Regarding Findings of Harassment, Sexual Harassment, Other Forms of Harassment, or Sexual Assault," that was published in the FR on March 10, 2020,⁵ establishes requirements for award recipient organizations to notify NASA upon a finding of such forms of harassment by its Principal Investigator (PI) or Co-Investigator (Co-I).

⁵ 47 FR 13934 (accessible at: <https://www.govinfo.gov/content/pkg/FR-2020-03-10/pdf/2020-04815.pdf>).

2.4.1.2 Agency procedures for reviewing and processing notifications received from NASA-funded recipient organizations based on NASA's harassment-related award T&C, in accordance with the award term, the recipient organization is required to notify NASA of:

- a. Any finding/determination regarding the PI or any co-I that demonstrates a violation of statutes, regulations, or executive orders or recipient policies or codes of conduct, relating to sexual harassment, other forms of harassment, or sexual assault; and/or
- b. If the PI or any co-I is placed on administrative leave or if any administrative action has been imposed on the PI or any co-I by the recipient relating to any finding/determination or an investigation of an alleged violation of statutes, regulations, or executive orders or recipient policies or codes of conduct, relating to sexual harassment, other forms of harassment, or sexual assault. Such notification is to be submitted within ten business days from the date of the finding/determination, or the date of the placement of a PI or co-I by the recipient on administrative leave or the imposition of an administrative action, whichever is sooner.

2.4.1.3 The reporting requirement applies to all new awards and funding amendments issued on or after April 9, 2020.

2.4.2 Harassment T&C Notification Working Group (WG)

2.4.2.1 Roles and Responsibilities. NASA will review and disposition each recipient harassment T&C notification within 45 days of the Agency's receipt of notification under the auspices of a "Harassment T&C Notification Working Group", including the following:

- a. Receipt, Coordination and Dissemination. The WG is chaired and coordinated by ODEO as the organization with primary agency responsibility for addressing sexual and other forms of harassment among recipients of NASA financial assistance. ODEO, as the WG Chair, receives, disseminates and coordinates information regarding notifications.
- b. Review and Dispositioning. The awarding organization, acting on the advice of the WG members, who will review each notification, will make a determination as to steps the Agency may choose to take in responding to a notification (see J, below).

2.4.2.2 Meetings. The WG will meet on an as-needed basis to respond to a particular notification. For each notification, ODEO will contact the WG by encrypted email to provide the notification (see G, below) within 3 days of receipt and to schedule a meeting for the WG to discuss the notification, as needed.

2.4.2.3 Membership. The WG will be comprised of both standing and ad hoc members (see 3(b), below) and consist

of designated representatives from the following organizations:

a. Standing Members

- 1) Office of the Chief of Research Activities, NASA Shared Services Center (NSSC).
- 2) Office of the Chief Financial Officer (OCFO).
- 3) Office of the Chief Scientist (OCS).
- 4) Office of Diversity and Equal Opportunity (ODEO).
- 5) Office of the General Counsel (OGC).

b. Ad Hoc Members ⁶

⁶ Note that only the Mission Directorate responsible for the award involved in a given notification will participate in meetings relating to that notification.

- 1) Aeronautics Research Mission Directorate (ARMD).
- 2) Human Exploration and Operations Mission Directorate (HEOMD).
- 3) Science Mission Directorate (SMD).
- 4) Space Technology Mission Directorate (STMD).

2.4.2.4 The role and responsibility of the WG will be to advise on the potential legal, policy, and financial implications, as well as possible impacts to the award and award personnel, relating to a particular notification.

2.4.3 Review and Evaluation of Submitted Notifications:

2.4.3.1 Evaluation Criteria. The WG will review the information provided in the notification and obtained through any additional follow-up with the recipient, evaluating the recipient's ability to continue the award, based on the 4 factors identified in the Harassment Notification T&C, those 4 factors being:

- a. The safety and security of personnel supported by the NASA award;
- b. The overall impact to the NASA-funded activity;
- c. The continued advancement of taxpayer-funded investments in science and scientists; and
- d. Whether the recipient has taken appropriate action(s) to ensure the continuity of science and that continued progress under the funded project can be made.

2.4.3.2 Evaluation Timeframes. The WG will complete its evaluation within 30 days of the Agency's receipt of notification absent the need to obtain further information from the recipient, which will extend the timeframe.

- a. If the WG requests additional information from the recipient, the recipient is required to respond with the information requested within 5 calendar days, extending the timeframe for the WG's evaluation.
- b. To the extent that a recipient takes longer than 5 calendar days to respond, or is non-responsive to a request for information, the WG will contact the recipient to determine the issue and address it.
- c. In situations described in (b) above, the clock will remain stopped on the 30-day evaluation timeframe until the matter is addressed.

2.4.3.3 Dispositioning and Communications with Recipient. The WG will proceed with dispositioning of the notification as follows:

- a. Based on the results of this review and evaluation of the four factors cited above, the WG will make a recommendation to the awarding organization as to additional steps, if any, within 30 calendar days of the Agency's receipt of notification.
- b. To the extent that it is needed, communication with recipients on additional steps regarding the notification will be conducted through the NSSC and the awarding organization.
- c. Records pertaining to the notification and subsequent action, if will be maintained by ODEO through primary and alternate action officials identified above.

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