

# National Association for State Community Services Programs



2023

WINTER TRAINING CONFERENCE

April 3 – 7 | Arlington, VA

**MISSION POSSIBLE**

**Restoring Hope**

**Civil Rights Compliance Overview**

[www.nascsp.org](http://www.nascsp.org)



U.S. DEPARTMENT OF  
**ENERGY**

*Office of*  
**CIVIL RIGHTS & EEO**

**SLAC National Accelerator Laboratory  
Menlo Park, CA**

# Office of Civil Rights and Equal Employment Opportunity (OCR-EEO)

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**NASCSP Winter Training  
WAP New Managers Orientation  
April 3, 2023**



U.S. DEPARTMENT OF  
**ENERGY**

Office of  
CIVIL RIGHTS & EEO



## Jody TallBear

Chief  
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U.S. Department of Energy



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Attorney Advisor  
Office for Civil Rights  
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## Agenda

- OCR's Role as a federal agency and authorities
- Protected Classes under Title VI, Title IX, §504, and the Age Discrimination Act
- How OCR enforces federal civil rights regulations and executive orders through enforcement activities
- Q&A



U.S. DEPARTMENT OF

**ENERGY**

Office of  
**CIVIL RIGHTS & EEO**



Brookhaven National Laboratory

# Sample Anti-Discrimination Notice posted by FFA Recipients



## NONDISCRIMINATION NOTICE

The Blue Cross and Blue Shield Service Benefit Plan complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex. This Plan does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

### The Blue Cross and Blue Shield Service Benefit Plan:

**Provides free aids and services to people with disabilities to communicate effectively with us, such as:**

- Qualified sign language interpreters
- Written information in other formats (large print, audio, accessible electronic formats, other formats)

**Provides free language services to people whose primary language is not English, such as:**

- Qualified interpreters
- Information written in other languages

If you need these services, contact the Civil Rights Coordinator of your local Blue Cross and Blue Shield company by calling the customer service number on the back of your member ID card.

If you believe that this Plan has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with the Civil Rights Coordinator of your local BCBS company. You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, your local BCBS company's Civil Rights Coordinator is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

**U.S. Department of Health and Human Services**  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, D.C. 20201  
1-800-368-1019, 800-537-7697 (TDD)



8701103C310J800303

# DOE F 1600.5 – Assurance of Compliance

DOE F 1600.5  
(06-94)  
All Other Editions Are Obsolete

**U.S. Department of Energy**  
**Assurance of Compliance**  
**Nondiscrimination in Federally Assisted Programs**

OMB Control No.  
1910-0400

**OMB Burden Disclosure Statement**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

\_\_\_\_\_ (Hereinafter called the "Applicant")  
HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended, (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

# OCR's Role

The Department of Energy's Office of Civil Rights was created pursuant to Congressional mandate in Title VI of the 1964 Civil Rights Act to ensure that Federal Financial Assistance is not used to support discrimination against **protected classes**.

Yucca Flats National Nuclear Safety Site



# **OCR's Jurisdictional Authority**

**OCR enforces regulations that implement federal civil rights laws that were promulgated by the Department of Energy.**

**OCR also enforces Executive Orders issued by the President which instruct agencies how to interpret and apply regulations and laws.**

**Unlike agencies that prosecute criminal violations, OCR was established to achieve compliance with a high priority on voluntary resolution.**

**OCR does not criminally prosecute violations. Persistent willful violations, however, can result in suspension or revocation of FFA, as well as attendant administrative proceedings.**



# Protected Classes

Fermi National Accelerator Laboratory

# Title VI: Race, Color, National Origin

Title VI and its implementing regulations prohibit the use of race, color, or national origin as a reason to:

- Deny any person any disposition, service, financial aid, or benefit under any program;
- Provide any person any disposition, service, financial aid, or benefit to a person which is different, or is provided differently, from that provided to others;
- Segregate or separate persons in relation to any disposition, service, financial aid, or benefit;

# National Origin and Limited English Proficiency

Executive Order 13166 instructs agencies that Title VI prohibits discriminating on the basis of national origin through language access. EO 13166 requires agencies to:

1. Develop guidance for federal recipients regarding their language access responsibility under Title VI;
2. Meet the same standards as federal recipients regarding meaningful access for limited English proficiency (LEP) individuals.

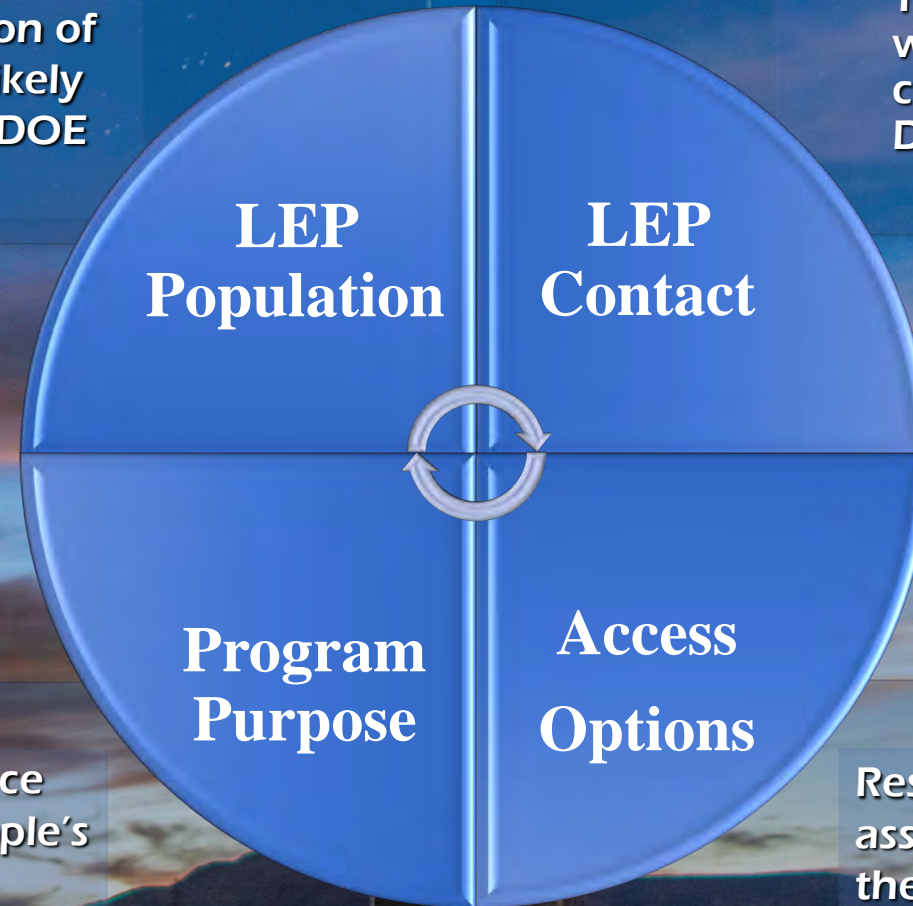
# National Origin and Limited English Proficiency

Consistent with DOE Guidance issued for FFA recipients, in 2004 the DOE issued an LEP Memorandum to all FFA recipients that included a flexible and fact-dependent standard by which to ensure meaningful access to DOE programs for LEP persons in compliance with E.O. 13166.

# Four-Factor Analysis to Improve Access for LEP Persons

The number or proportion of LEP persons eligible or likely to be encountered by a DOE program

The frequency with which the LEP persons contact or encounter a DOE program



The nature and importance of a DOE program to people's lives

Resources available and associated service costs to the program



Oak Ridge National Laboratory Arboretum



## Sex and Gender: Title IX

Title IX and its implementing regulations prohibit discrimination on the basis of sex, including sexual harassment.

1. Quid pro quo harassment - conditioning an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
2. Unwelcome sexual conduct so severe, pervasive, and objectively offensive that it deprives a person of equal access to education programs (i.e., creates a hostile environment);
3. Sexual assault, dating violence, domestic violence, and stalking as defined by federal law

# Executive Order 14091: Gender Identity and Sexual Orientation

- Interprets the Equal Protection Clause of the 14<sup>th</sup> Amendment and Title IX to prohibit discrimination on the basis of gender identity and sexual orientation, so long as the laws do not contain sufficient indications to the contrary.
- Establishes a federal policy to prevent and combat discrimination on the basis of gender identity or sexual identity.
- Based on Supreme Court's decision in *Bostock v. Clayton County* in 2020.

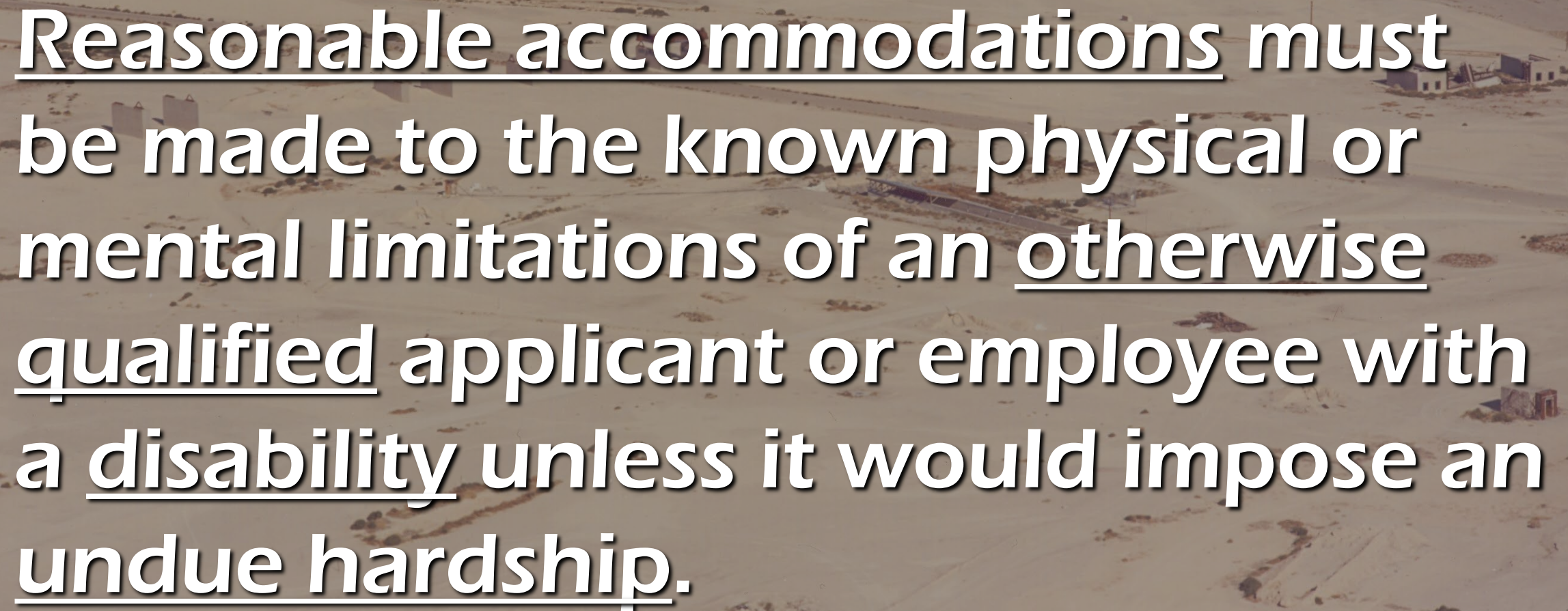


**Frenchman Flat Nuclear National Security Site**

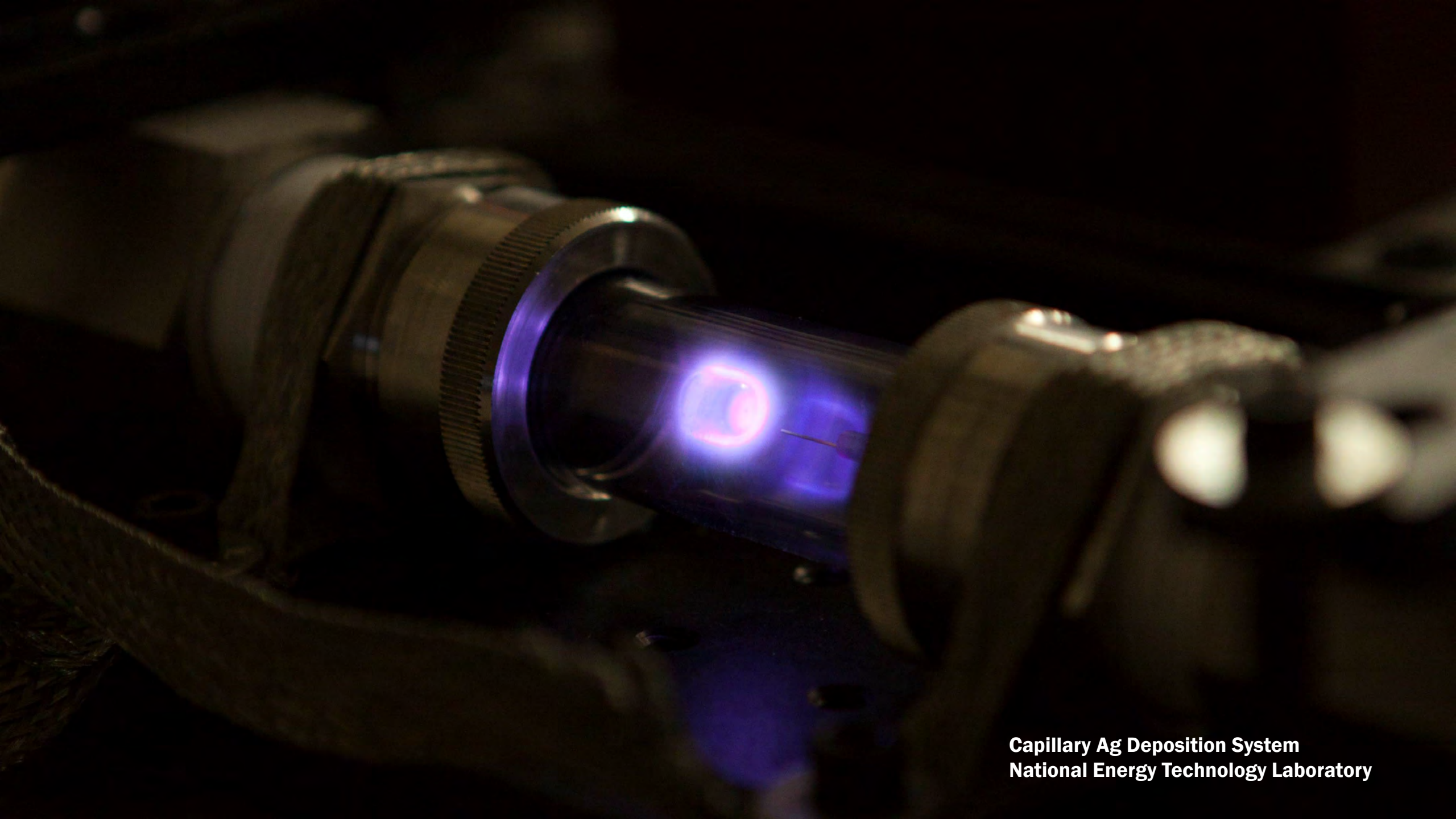
# Disability: §504

**Section 504 of the Rehabilitation Act and its implementing regulation prohibit discrimination on the basis of disability, specifically:**

**Providing different or separate aids, benefits, or services to persons with disabilities, unless necessary to ensure that persons with disabilities receive aids, benefits, or services that are as effective as those provided to others**

An aerial photograph of a vast, flat, sandy desert landscape. In the distance, there are several small, rectangular structures and what appears to be a fenced-in area. The ground is light-colored with some darker patches and tracks. The text is overlaid on a semi-transparent grey rounded rectangle in the center of the image.

**Reasonable accommodations must be made to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless it would impose an undue hardship.**



**Capillary Ag Deposition System  
National Energy Technology Laboratory**

# Age Discrimination Act

- Prohibits using age distinctions in any program or activity, or taking any other actions directly, or through contractual, licensing, or other arrangements, which have the effect of discriminating against persons because of age
- FFA recipients may take an action otherwise prohibited if that action reasonably accounts for age as a factor necessary to the normal operation or statutory objective of a program or activity



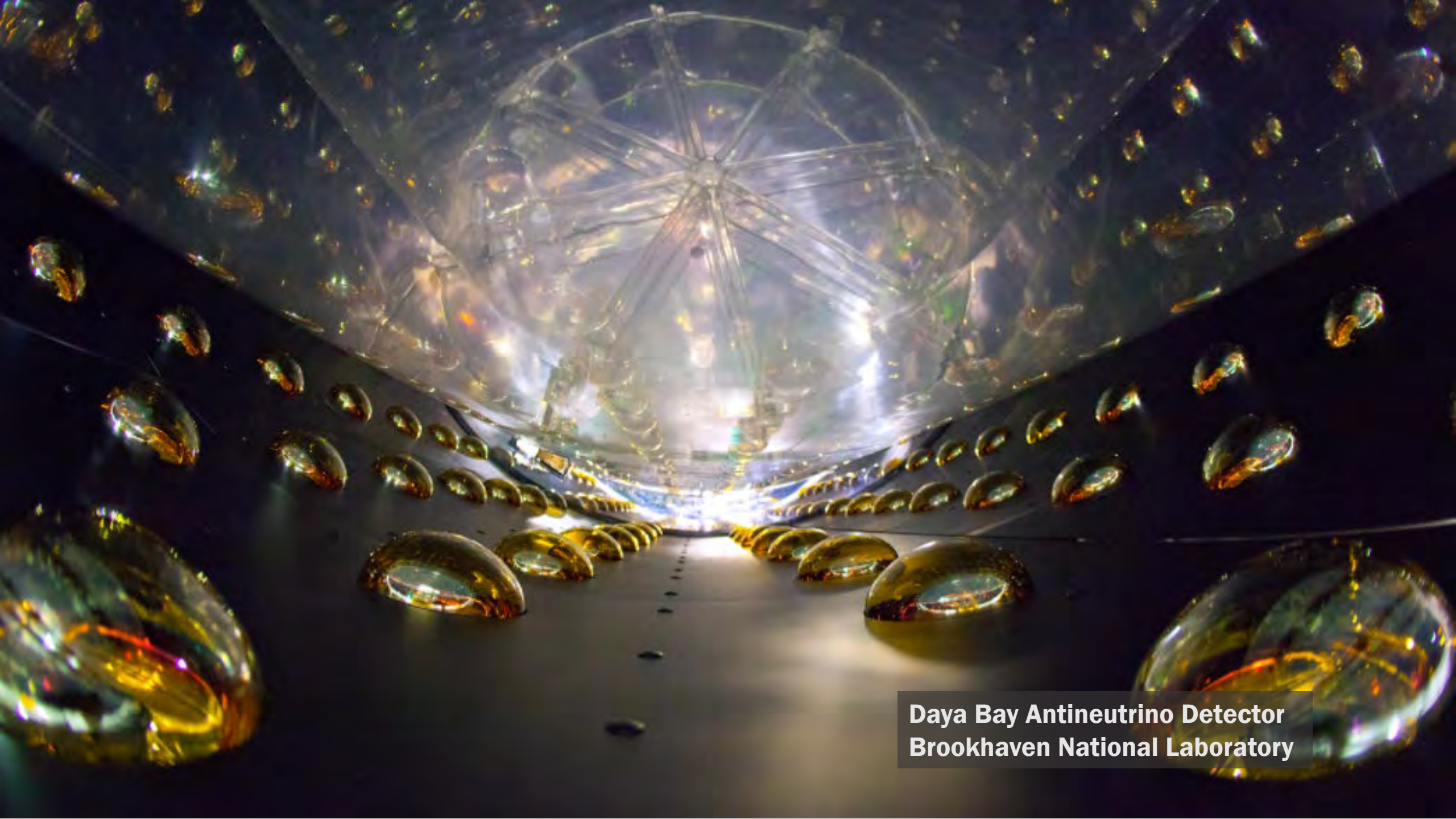
Los Alamos National Laboratory



# Retaliation

All DOE civil rights regulations extend to prohibit:

- **Materially adverse actions taken against a person because that person (or a close affiliate) engages in protected activity.**
- **Protected activity occurs when a person opposes practices made unlawful by civil rights statutes or participates in proceeding pursuant to a civil rights statute (e.g. filing, testifying, complying with document requests in good faith).**



**Daya Bay Antineutrino Detector  
Brookhaven National Laboratory**

# **How OCR Achieves Compliance**

**Pre-Award Reviews**

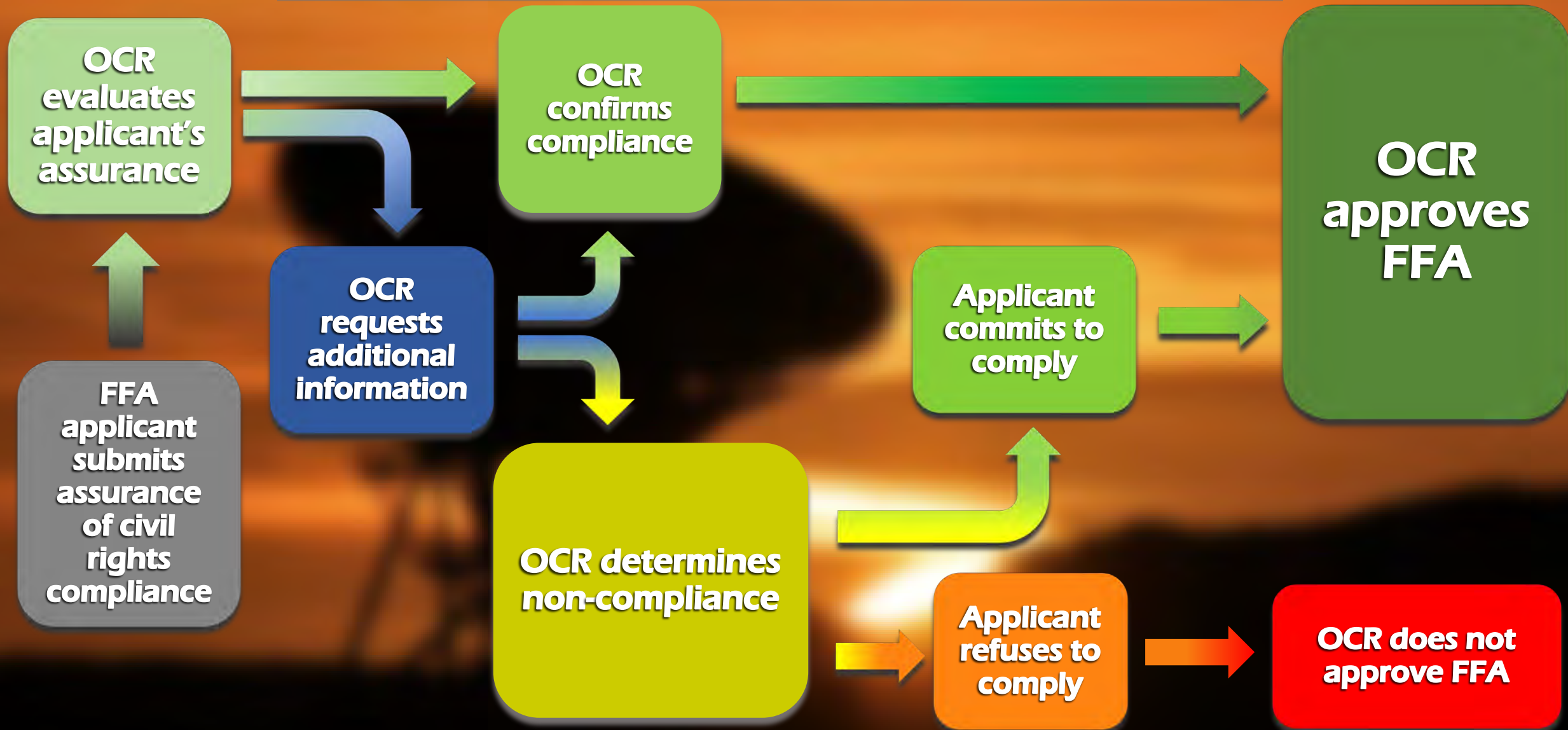
**Compliance Reviews**

**Complaint Investigations and Resolutions**



**National Radio Astronomy Observatory  
Los Alamos National Laboratory**

# Pre-Award Reviews





**Oak Ridge National Laboratory**



# **Compliance Reviews**

**Select Recipients and Programs**

**Collect and Analyze Information**

**Resolve Compliance Concerns**

# Select Recipients and Programs

- **DOE's regulations require OCR to conduct compliance reviews of FFAs**
- **OCR determines which FFAs will be reviewed based on: (1) demographics; (2) disparities; (3) complaints, (4) FFA Amount**



# **Collect and Analyze Information**

## **Program Evaluation**

**FFA recipients must produce complete and accurate reports, including information on: key personnel; notices and policies prohibiting discrimination; complaint procedures; program recruitment efforts; program application, admission processes, as well as participation and success rates**

# **Collect and Analyze Information**

## **Program Evaluation**

**FFA recipients must also produce demographic data disaggregated by race, sex, and national origin.**

# **Collect and Analyze Information**

## **Report of Findings**

- **OCR will review and analyze all data and determine if the FFA recipient is in compliance.**
- **If the recipient is in compliance, OCR will notify the recipient and close the Review.**
- **If the recipient is not in compliance, OCR will attempt to resolve all compliance concerns.**

# **Resolve Compliance Concerns**

**To resolve non-compliance, OCR will:**

- 1. Instruct the recipient to take remedial action(s); i.e., amend policies to conform to regulations, conduct training; correct improper actions.**
- 2. Monitor the recipient until compliance is demonstrated.**

**Usually consists of regular reports on progress at pre-identified intervals (i.e., an email every four months).**



**Pantex Wind Farm**

# **Complaint Investigations**

**As a federal civil rights law enforcement agency, OCR has the authority to investigate discrimination complaints filed against DOE FFA recipients.**

# **Complaint Investigations**

**DOE regulations prohibit FFA recipients from discriminating or retaliating on the basis of a protected status against:**

- Program applicants**
- Covered employees**
- Any other type of beneficiary**

# **Complaint Resolution Process**

**Determine Jurisdiction**

**Investigate Allegations**

**Resolve Non-Compliance**



# Evaluation and Establishing Jurisdiction

**The entity must be a recipient of FFA granted or administered by DOE.**

**The complaint must allege a violation within 180 days of knowledge or purported knowledge.**

**The allegation must be based on a violation of a regulation that OCR enforces.**

# **Investigating Allegations**

**Collect data and conduct interviews**

**Analyze data**

**Draft Findings of Facts, Conclusions of Law,  
and notify parties of outcome**

# **Resolution**

**Voluntary Resolution**

**Remedial Orders**

**Program Monitoring**

# **Termination of funding**

**Non-compliance or threatened non-compliance can be enforced by suspension of, termination of, or refusal to grant or continue FFA, or other means authorized by law**

# Investigation Red Flags

**1. Absolute restrictions or class-only selections**

**Ex: A program only for unmarried, pregnant females and unavailable to anyone else.**

**2. Consistently disparate outcomes among similarly situated members of different protected classes**

**Ex: A protected class never being selected despite comprising 25% of the local population.**

**3. Different treatment being justified by facially implausible explanations**

**Ex: Denying benefits for a protected class based on an explanation that is repeatedly contradicted by official documents and statements.**



**Inert Gas Fusion Infrared and Thermal Conductivity Detection  
National Energy Technology Laboratory Albany**

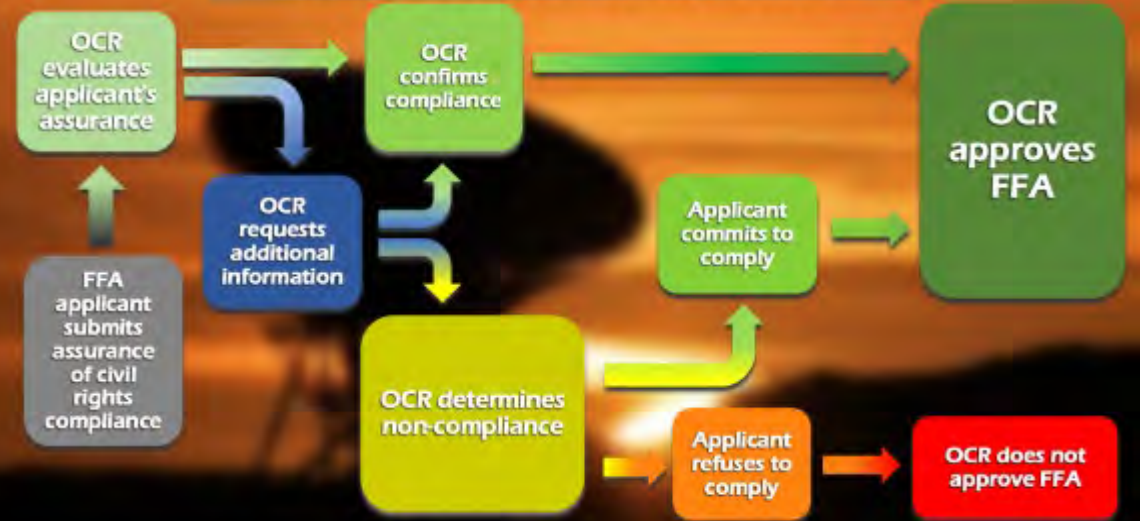
# Q&A Parameters

- **OCR is a neutral and impartial federal agency. OCR does not represent any party in an investigation.**
- **As a consequence, OCR is prohibited by federal law from giving legal advice to any party under 18 U.S.C. § 205. There are criminal penalties for violations of this statute.**
- **Additionally, all government employees, including OCR's attorneys, "shall act impartially and not give preferential treatment to any private organization or individual" under 34 C.F.R. § 2635.101(b)(8).**
- **OCR cannot and will not give legal advice.**

# Protected Classes

Fermi National Accelerator Laboratory

## Pre-Award Reviews



## Compliance Reviews

Select Recipients and Programs

Collect and Analyze Information

Resolve Compliance Concerns

## Complaint Investigations

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