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# NASA Procedural Requirements

**COMPLIANCE IS MANDATORY**

**NPR 2081.1A**

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Request Notification of Change (NASA Only)

## **Subject: Nondiscrimination in Federally Assisted and Conducted Programs (Revalidated on May 7, 2015)**

**Responsible Office: Office of Diversity and Equal Opportunity**

| [TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [AppendixA](#) | [AppendixB](#) | [AppendixC](#) |  
[AppendixD](#) | [ALL](#) |

## **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: Title VI, Title IX, Section 504, or the Age Discrimination Act, 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 Section 504, Section 508 and Executive Order 13160. These authorities are addressed in more detail in Chapter 3.

2.1.1.2 The receiving NASA Center or Agency office shall indicate the receipt date on the complaint upon the date received and refer the complaint to ODEO within 5 days of receipt. <sup>4</sup>

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<sup>4</sup> See Department of Justice, Coordination and Review Section, "Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes," (September 1998), p. 100. DOJ's Title VI Investigations Manual is an invaluable resource, providing comprehensive information on conducting Title VI complaint and compliance review investigations. It may be accessed at <http://www.usdoj.gov/crt/cor/Pubs/manuals/complain.html>. DOJ's Title VI Investigations Manual notes that the receipt date of a complaint is to be noted by the receiving agency immediately upon receipt. Note that all references to days are to calendar days.

a. If ODEO receives the complaint from a NASA Center or Agency office, the receipt date of the complaint shall be the postmarked date on the complaint.

b. If ODEO receives the complaint directly from the complainant, the receipt date shall be the postmarked date on the complaint.

c. If ODEO receives the complaint from another Federal agency, the receipt date shall be the date the complaint was received by the other Federal agency. <sup>5</sup>

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<sup>5</sup> DOJ's Title VI Investigations Manual states that "This is important because the date [the] agency receives the complaint may be what ultimately determines the complainant's ability to seek redress of alleged discrimination, even if [the] agency is not the appropriate agency to investigate the complaint. The receipt date by a Federal agency becomes the receipt date for other Federal agencies." See DOJ Title VI Investigations Manual, p. 10.

2.1.1.3 In order to be accepted by ODEO, all complaints shall include sufficient information to identify and contact the complainant. <sup>6</sup>

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<sup>6</sup> The DOJ Title VI Investigations Manual states that for a complaint to be "complete," the following information is required: (1) a way to contact the complainant; (2) the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination; (3) the respondent, i.e., identification of the person or institution alleged to have discriminated; and (4) sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. See DOJ Title VI Investigations Manual, p. 16.

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

2.1.2 Complaint Acknowledgement.

2.1.2.1 Upon receipt by ODEO, the incoming complaint shall be assigned a case number

2.1.2.2 ODEO shall establish a case file for documents pertaining to the complaint.

2.1.2.3 ODEO shall acknowledge receipt of the complaint by a written acknowledgement letter to the complainant within 15 days of complaint receipt.

a. ODEO shall notify the respondent of ODEO's receipt of the complaint concurrent with the complainant's acknowledgement letter.<sup>7</sup>

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<sup>7</sup> 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 against whom discrimination is being alleged in a complaint. See also App. A. Definitions.

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b. ODEO shall forward a copy of the complaint to the respondent.

c. The acknowledgement letter shall state that the complaint will be evaluated.

2.1.2.4 Where ODEO determines that a complaint is incomplete, the acknowledgement letter shall advise the complainant of the information needed to complete the complaint.

2.1.2.5 The complaint must submit the requested information within 30 days of the date of receipt of the acknowledgement letter (see paragraph 2.1.3.4 for "Gathering Basic Information").

2.1.2.6 If a complainant does not respond to the request for information necessary to complete the complaint, the AA, ODEO, shall administratively close the complaint.

2.1.2.7 If ODEO closes an incomplete complaint for lack of a response from the complainant, 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 as promptly as possible, generally within 30 days of complaint receipt. If ODEO determines it needs additional time to complete its complaint evaluation, it shall notify the complainant no later than 30 days after complaint receipt and provide a specific timeframe for completion of the evaluation.

2.1.3.2 Intake. ODEO shall review each complaint to determine whether it is complete, timely filed, within NASA jurisdiction, subject to the authorities enforced by NASA, that the complainant has standing, and whether the complaint will be resolved based on an investigation or is appropriate for an attempt at early resolution (See paragraph 2.1.4).

a. ODEO shall make an appropriate referral of any complaints that are not within its jurisdiction or which are the subject of concurrent jurisdiction with another Federal, state, or local agency within 15 days of the determination for referral.

b. ODEO shall notify the complainant and respondent of the referral in writing at the time the referral is forwarded to the appropriate agency.

c. If a complaint falls within the coverage of the NASA-Department of Education Memorandum of Understanding (MOU), that is, the complaint is filed pursuant against an educational institution receiving NASA financial assistance, ODEO shall stop internal processing of the complaint, to forward the complaint to the Department of Education Office for Civil Rights, under the terms of the MOU.

(1) For purposes of determining whether a complaint falls under the coverage of the MOU, the term "educational institution" is understood to mean institutions of primary education, i.e., K-12, institutions of higher education, and school districts receiving NASA financial assistance.

(2) In instances where the complaint is referred to the Department of Education under the MOU, ODEO shall inform the complainant of the referral consistent with paragraph 2.1.3.2(b).

d. All complaints accepted for processing shall first be addressed through an opportunity for Early Complaint Resolution (ECR) before a formal investigation is initiated (see paragraph 2.1.4.1).

2.1.3.3 Timeliness Evaluation. ODEO shall examine all complaints for timeliness.

a. To be timely, complaints filed under authorities covered under this NPR shall be filed within 180 days from the

date the person knew or should have known of the alleged discrimination with the exception that complaints alleging violations of Section 508 of the Rehabilitation Act of 1973 pertaining to closed captioning of video programming, to be timely the complaint shall be filed within 60 days from the date the person knew or should have known of the alleged discrimination. <sup>8</sup>

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<sup>8</sup> The applicable time period is established under Federal Communication Commission (FCC) regulations at 47 C.F.R. § 79.1(g)1.

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b. 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. <sup>9</sup>

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<sup>9</sup> DOJ regulations state that "the Agency may exercise its discretion and accept a complaint filed later in time" than the Agency's regulatory timeframe allows. See, e.g., 28 C.F.R. § 42.107(b). DOJ has indicated in policy guidance (Title VI Legal Manual and Title VI Investigative Manual) that agency "designated officials" (in NASA's case the AA, ODEO) are vested with the authority to grant such waivers under certain circumstances. See DOJ, Title VI Legal Manual, §X(C) and Title VI Investigations Manual, § III(5)(A). at 47 C.F.R. § 79.1(g)1).

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c. If a complaint is not filed in a timely manner, the AA, ODEO, or designee, 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.

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

2.1.3.4 Gathering Basic Information. ODEO shall examine other sources of information (e.g., statistical data or respondent information) to ensure that it has sufficient information to evaluate complaints appropriately.

a. ODEO staff shall provide 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.

b. This shall include foreign nationals with updated visa information and naturalized citizens who are currently working on a NASA research grant or grants and who may need help in providing information that NASA needs.

c. ODEO shall contact the complainant by telephone or other appropriate means 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.

d. If the necessary information is not provided within 30 days of the date of the notification letter, the complaint shall be closed and the complainant so informed.

e. 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.

2.1.3.5 Jurisdictional and Issue/Subject Matter Analysis.

a. ODEO shall identify 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 (Title VI), gender in educational programs receiving federal financial assistance (Title IX), disability in federally assisted or conducted programs (Section 504), age in federally assisted programs (Age Discrimination Act of 1975), comparable access to electronic and information technology for individuals with disabilities (Section 508); or race, color, national origin, gender, disability, age, religion, sexual orientation, or status as a parent in federally conducted education or training programs (Executive Order 13160).

b. In identifying the subject matter, ODEO shall look 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.

2.1.3.6 Determining Not to Proceed Further. There are a variety of reasons why ODEO may not proceed further with complaint allegations. These are described below. 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.
- 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 by ODEO 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, 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. ODEO obtains information indicating that the allegations raised by the complaint have been resolved. In such cases, ODEO shall attempt to confirm the resolution. If ODEO determines there are no current allegations appropriate for further complaint 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 NASA anticipates that the Agency shall provide the complainant with a comparable resolution process. The complainant shall be advised to refile within 60 days of the completion of the other agency's action. (NASA will not complete a de novo review of the case.)
- i. ODEO obtains information that the complaint allegation is moot, and there are no class allegations.
- j. ODEO determines that its 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 shall be contacted as soon as possible so the investigation may proceed.

(2) If this does not resolve the matter, ODEO shall 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 ODEO closing the case.

k. A complaint over which NASA otherwise has jurisdiction, when ODEO transfers or refers the complaint to another agency for investigation.

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

2.1.3.7 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 AA, ODEO, may consider treating such a complaint as a matter appropriate for a compliance review (See paragraph 2.2, Compliance Reviews).

a. If the AA, ODEO, determines that a compliance review is the most effective means of addressing multiple individual complaints against the same recipient, ODEO shall notify the complainants, close the individual complaints, assign a review number, and initiate a review as soon as possible.

b. Any outstanding individual allegations that cannot be promptly resolved will be incorporated into the review.

c. ODEO shall inform the complainant upon completion as specified in paragraph 2.1.3.8, Notifying the Complainant and Respondent of Evaluation Determinations."

2.1.3.8 Notifying the Complainant and Respondent of Evaluation Determinations.

a. If ODEO decides to proceed with complaint processing, the evaluation letters to the complainant and the respondent will contain:

(1) The basis for the complaint.

(2) A brief statement of the allegations over which NASA has jurisdiction.

(3) A brief statement of NASA's jurisdiction over the complaint.

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

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

b. If ODEO does not proceed to complaint resolution, the letter to the complainant (and respondent) shall state that the complaint is being closed, explain the reason for the decision, and provide notice of appeal rights, as appropriate.

(1) The letter(s) shall be signed by the AA, ODEO, or designee.

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

(3) ODEO shall encourage 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 ODEO issues a finding in favor of the respondent, 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 AA, ODEO, shall designate authority to conduct ECR activities in processing of complaints pertaining to NASA assisted programs.

2.1.4.1 Pursuing Resolution Through ECR.

a. Before undertaking a formal investigation, ODEO shall pursue resolution through ECR of all complaints over which ODEO has jurisdiction, if both parties agree to ECR.

b. ODEO shall advise the complainant of the opportunity for ECR, where both parties agree and ODEO deems the matter appropriate for resolution efforts, e.g., resolution between the parties (RBP).

c. ODEO shall set forth a brief explanation of the processes for ECR and request that each party indicate in a written

response whether it consents to participate.

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

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

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

e. If ODEO determines that further ECR efforts may result in a timely resolution to the case (at any time after a formal investigation has been initiated), ODEO shall resume efforts to achieve case resolution through ECR.

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

g. ODEO shall monitor the process of ECR to ensure adequate time for completion of the investigation in the event that ECR is unsuccessful. h. 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 shall 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 Chapter 3, "the respondent" is a NASA grant 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 shall be conducted prior to the agreement being finalized.

#### 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, 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, shall be reflected in the case file and the resolution letter.

#### 2.1.4.4 Monitoring the Agreement.

a. ODEO shall inform the parties that if a breach occurs, the complainant has the right to inform ODEO that a breach has occurred within 30 days from the date the complainant knew or should have known of the breach.

b. ODEO shall inquire into the matter and attempt to cure the breach.

c. If the breach cannot be cured within a reasonable time, ODEO shall resume the complaint process 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 ODEO has decided to proceed with investigation of the complaint, it shall notify the complainant and the respondent that it has accepted the complaint for investigation.

b. In complaints that raise limited (usually individual) allegations, ODEO shall request a position statement from the respondent. This is a means for the respondent to offer a complete, detailed response to the allegations.

c. ODEO shall complete all complaint investigations within 180 days after ODEO forwards notification letters to the complainant and the respondent of its intent to investigate.

2.1.5.2 Investigative Plan Development. Prior to conducting a complaint investigation, ODEO shall develop an Investigative Plan (IP) to encompass several key activities: jurisdictional determination, identification of bases and issues, complainant and respondent notification, identification of applicable legal theories, information request/data collection, and onsite determination and notification. 10

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<sup>10</sup> See DOJ Title VI Legal Manual, § VIII, and DOJ Title VI Investigations Manual, § V(3)(a)-(c), for detailed discussion and analysis of disparate treatment; disparate impact; national origin/limited English proficiency, and retaliation in the context of Title VI and other nondiscrimination statutes.

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2.1.5.3 Information Request/Data Collection. ODEO shall request documentary evidence from the respondent, develop interview questions based upon that data and any other available information, and conduct interviews with the complainant, respondent/agency personnel, and others, as appropriate, and in accordance with Federal law. Note: Information collected pursuant to the processing of a complaint or compliance review under this NPR is NASA Sensitive but Unclassified (SBU) and subject to the provisions of NPR 1600.1, NASA Security Program Procedural Requirements, identifying procedures for identifying and storing NASA SBU.

- a. ODEO shall gather, review, and evaluate all written information pertinent to the case, including records of both the respondent and the complainant.
- b. The exact approach taken to data/information collection will vary from case to case depending on the issues raised, the extent to which relevant data are in the control of the respondent or others, and investigative strategies consistent with DOJ's Title VI Investigations Manual.
- c. ODEO shall prepare an information/data request letter for the respondent requesting information relevant to the investigation. This letter may be used to initiate information collection or to request additional information after the primary information collection activity has been completed.
- d. The respondent will be given a reasonable amount of time, for example 45 days, from the date of ODEO's request to submit information.
- e. Consistent with NASA regulations, the respondent is expected to provide ODEO with access to all books, records, accounts, and other sources of information or facilities that ODEO finds necessary to determine compliance.

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<sup>11</sup> 14 C.F.R. § 1250.105(c).

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(1) This includes what an employee can supply orally as well as any written information he/she may have that is not maintained elsewhere by the respondent. See paragraph 2.1.5.8.

(2) The respondent shall submit information in any form ODEO stipulates as necessary for NASA's compliance activities.

(3) ODEO officials are instructed to proceed cautiously with such requests as the reasonableness of such requests is subject to review at later points in the process.

f. ODEO shall have access to a respondent's records, in accordance with Federal law.

(1) To protect the confidential nature of the records, ODEO may, for example, permit the respondent to use code names and retain a key to the code.

(2) However, ODEO shall inform the respondent that if at any time such a procedure impedes the timely investigation of the case, unmodified access to records will be needed.

g. Unless the request is made in the context of an ongoing complaint or compliance review investigation (see 5 C.F.R. §1320.3), ODEO shall not require a respondent 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. ODEO may, however, suggest suitable formats to be used at the discretion of the respondent as information collection instruments.

h. Similarly, ODEO shall consider Federal policies concerning paperwork burdens when requesting a respondent to do more than provide ODEO with access to normally maintained information.

i. Requests that a respondent provide information to meet an ODEO need shall be reasonable and take into consideration the burden being placed on the respondent.

j. If a respondent invites ODEO 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 for ODEO to extract the needed information, then the respondent has provided ODEO with the appropriate access.

2.1.5.4 Onsite Determination and Notification. If it is decided that an onsite investigation is necessary, ODEO shall issue notification to the complainant and the respondent of the onsite investigation.

2.1.5.5 Interviews. ODEO shall conduct interviews, take oral statements, and attempt 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, ODEO shall 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) ODEO shall inform the witness that if a representative with responsibilities to the respondent appears to interfere with ODEO's 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 ODEO has no other reason to believe the presence of the identified representative will interfere with the gathering of information, ODEO shall proceed with the interview.

(4) ODEO investigators shall 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 Analysis of the Evidence. Evidence standing alone does not prove a violation. It will be related to the policies and procedures of the respondent and issues under investigation. (For a detailed discussion on evidence in the complaint investigation process, see DOJ Title VI Investigations Manual, pp. 79-100.)

2.1.5.7 Investigative Report (IR). An IR shall be prepared for all cases ODEO investigates.

2.1.5.8 Letter of Findings (LOF). ODEO shall issue a "Violation" or "No Violation" LOF not more than 60 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 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 shall 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 Complaint Resolution after Investigation. Depending on the outcome of the investigation, ODEO shall take one of the following courses of action to resolve the complaint:

2.1.6.1 Violation Findings and Remedial/Corrective Actions.

a. If ODEO determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s), ODEO shall promptly issue a violation LOF specifying the factual findings and the legal basis for the violation(s). (See also paragraph 2.1.5.8.)

(1) The Violation LOF shall be prepared with appropriate consultation with OGC and reviewed and signed by the AA, ODEO.

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

(3) It is anticipated that this consultation process shall be completed within 30 days.

(4) As soon as concurrence is obtained, ODEO shall issue the LOF.

b. The AA, ODEO, shall attempt 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 shall be 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 also 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 shall be signed by the respondent within 20 days 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 shall provide ODEO with a written analysis in support of its position within 30 days after receiving the LOF.

(1) The respondent's rebuttal shall include the following: the specific issue for which the respondent does not agree with 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) ODEO shall respond to the respondent's rebuttal within 30 days after receipt. If ODEO agrees with and accepts the respondent's position, ODEO shall issue a revised LOF within 30 days after its notice of acceptance.

(3) If ODEO rejects the respondent's rebuttal, ODEO shall notify 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.

(4) 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, shall notify 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.

(5) If ODEO is still unable to obtain voluntary compliance, ODEO shall move to enforcement by either initiating administrative enforcement proceedings or referring the case to the DOJ. 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, a No Violation LOF shall be prepared.

b. The No Violation LOF shall include:

(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 also shall be sent to both the complainant and the respondent.

#### 2.1.7 Monitoring and Oversight

2.1.7.1 Following the issuance of a finding of discrimination, ODEO 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 shall be undertaken as outlined in the agreement.

a. The AA, ODEO, or designee, may agree to modify the schedule or the terms of the agreement, if necessary.

b. Any modifications to the agreement shall be appended to the original agreement.

c. The respondent and the complainant shall 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 respondent and the complainant shall be notified promptly in writing of this determination.

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 pursuant to Title VI, Title IX, Section 504, and the Age Discrimination Act, or a Directive to Comply pursuant to Executive Order 13160 or Section 508 of the Rehabilitation Act.

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. See 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 required under Executive Order 13166 and NASA LEP policy guidance (see 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 Fed. Reg. 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 Determining Whether to Conduct a Compliance Review. The AA, ODEO, shall decide 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 shall result 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 shall engage in voluntary compliance actions, where appropriate, at any stage of the compliance review process, and provide 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. DOJ recommends in its Title VI Legal Manual (see DOJ, Civil Rights Division, "Title VI Legal Manual" (September 1998) (hereafter cited as "Title VI Legal Manual")) that agencies implement an internal screening process whereby agency officials are notified of potential assistance grants and are provided the opportunity to raise a "red flag" or concern about the potential grant recipient. To the extent ODEO conducts such compliance reviews, they shall encompass 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. NASA shall require that prospective recipients provide assurances of compliance consistent with DOJ regulations (see Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, 28 C.F.R. Part 42, Subpart F, § 42.407(b)).

a. If an applicant refuses to sign a required assurance, ODEO shall recommend 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 Title VI, 42 U.S.C. § 2000d-1, and Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 C.F.R. § 50.3, § 50.3 (c)(1)(a).

b. The Agency need not prove actual discrimination at the administrative hearing, but prove only 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 shall 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. ODEO shall make a written determination as to whether the applicant is in

compliance consistent with 28 C.F.R. §42.407(b).

a. Where a determination cannot be made from the submitted data, ODEO shall require the submission of 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 compliance with regulatory provisions at 28 C.F.R. § 50.3 (c)II.a.1.

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. Id. (c)II.a.2.

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

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

a. NASA shall require recipients to obtain assurances of compliance from subrecipients.

b. When the recipient receives information pre-award that indicates noncompliance by an applicant for a subgrant, recipients may defer making the grant 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, stating that the Agency "shall from time to time review the practices of recipients to determine whether they are complying with this part." 14 C.F.R. §1250.106(a).

b. Consistent with Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, 28 C.F.R. Part 42, Subpart F, NASA 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. . . . In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review, procedures, and standards of evaluation," as stated at 28 C.F.R. § 42.407(c)(1).

c. The results of post-award reviews shall be committed to writing and include specific findings of fact and recommendations, in compliance with 28 C.F.R. § 42.407(c)(2).

d. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible, in compliance with 28 C.F.R. § 42.407(c)(2).

e. Consistent with Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, 28 C.F.R. Part 42, Subpart F, compliance reviews and complaint investigations shall follow the same guidelines and procedures (See paragraph 2.1).

##### 2.2.5.2 Timeframes

- a. Unless otherwise stated, all days are calendar days.
- b. ODEO shall issue a notice to the recipient subject to review not less than 60 days prior to the date that the compliance review activities commence.
- c. ODEO shall advise 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.
- d. ODEO shall complete a post-award compliance review within 90 days of the completion of the onsite review, barring extenuating circumstances, such as compliance negotiations with the grantee.

#### 2.2.5.3 Selection of Targeted Recipients.

- a. ODEO shall determine recipients for onsite compliance reviews based on neutral criteria, in coordination with the OGC.
- b. The following are examples of neutral criteria ODEO shall consider:
  - (1) Amount of grant funding awarded annually.
  - (2) Geographical diversity among selected recipients.
  - (3) Issues targeted in ODEO strategic planning documents and other Agency planning documents.
  - (4) Issues frequently identified as problems faced by program beneficiaries.
  - (5) Issues raised in a complaint or identified during a complaint investigation that could not be covered within the scope of the complaint investigation.
  - (6) Issues identified by other Federal, state, or local civil rights agencies.
  - (7) Issues identified by community organizations or advocacy groups that are familiar with actual incidents to support their concerns.

2.2.5.4 Development of a Detailed Compliance Review Plan (CRP). Prior to conducting a compliance review, a CRP shall be developed 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 AA, ODEO, 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 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 Compliance Review Findings.

a. ODEO shall notify the recipient and the appropriate NASA Center in writing of the findings of the compliance review within 90 days following the completion of the 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 30 days following receipt of the compliance review investigation LOF, the recipient shall be required to provide notice to ODEO of the actions it will undertake to remedy any findings of noncompliance.

c. When ODEO issues an LOF, ODEO shall send a copy of the letter to the appropriate NASA Center Director.

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

e. Findings of Noncompliance.

- (1) When ODEO issues a noncompliance LOF following a compliance review investigation, ODEO shall monitor the recipient until compliance has been achieved.
- (2) When all corrective actions are completed, the review shall be closed.
- (3) If ODEO concludes, or the recipient presents adequate documentation that a violation noted during the review was corrected prior to review completion, the compliance review report and the LOF shall state that a violation existed at the time of the review, but that it was voluntarily corrected by the recipient.

## **2.3 Enforcement Action Pursuant Title VI, Title IX, Section 504, and the Age Discrimination Act**

### 2.3.1 Violation Determination.

2.3.1.1. Issuing the Violation LOF. In both the complaints processing and compliance review contexts, if ODEO determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s) after an attempt to negotiate a corrective action agreement, ODEO shall promptly issue a Violation LOF specifying the factual findings and the legal basis for the violation(s).

2.3.1.2 Moving to Enforcement. ODEO shall again attempt to negotiate a corrective action agreement. If ODEO is still unable to obtain voluntary compliance, ODEO will move immediately to enforcement.

- a. Initiating administrative proceedings to suspend, terminate, or refuse to grant 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 shall follow the procedures set forth at 14 C.F.R. §§1250.108-109.

2.3.2.2 With regard to the Age Discrimination Act of 1975, NASA shall 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, as set forth in 14 C.F.R. § 1252.402.

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 grant or continue assistance because of failure to comply, the notice of imposition of sanctions and Notice of Opportunity shall be 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 grant or continue Federal financial assistance shall become 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 ODEO shall:

- (1) Notify the recipient of its failure to comply and of the action NASA shall take to affect compliance.
- (2) Provide the recipient at least 10 days from the mailing of the notice before taking action.
- (3) 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 C.F.R. Part 1250.109(e).

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 (Pub. L. 88-352, Title VI, Section 602, July 2, 1964, 78 Stat. 252).

2.3.2.5 If an administrative proceeding is initiated, a team shall 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 effected:

- a. By the suspension or termination of or refusal to grant 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, shall 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. 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 ODEO determines that voluntary compliance cannot be achieved, it 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. 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 shall be shared electronically with the AA, ODEO.
  - c. ODEO shall 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 ODEO concludes that the recipient is not voluntarily providing access, it shall notify the recipient of ODEO's determination and ODEO's intention to recommend enforcement.
- a. ODEO shall then prepare a draft letter, which may include notice of NASA's intention to impose deferral, and a brief information memorandum.
  - b. These documents shall be forwarded to the AA, ODEO.
  - c. A Notice of Opportunity for Hearing shall be issued within 30 days of the decision to move to enforcement.

| [TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [AppendixA](#) | [AppendixB](#) |  
[AppendixC](#) | [AppendixD](#) | [ALL](#) |

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