

DRAFT OMB SUPPORTING STATEMENT FOR

10 CFR PART 5

"NONDISCRIMINATION ON THE BASIS OF SEX (INCLUDING PREGNANCY, SEXUAL ORIENTATION, AND GENDER IDENTITY) IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE"

(3150-0209)

EXTENSION

Description of the Information Collection

The regulations under 10 CFR Part 5 implement the provisions of Title IX of the Education Amendments of 1972, as amended, except section 904 and 906 of those amendments (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688 and *Bostock vs. Clayton County, Georgia* under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 140 S. Ct. 1731, 1741, 590 U.S.). The provisions are designed to eliminate, with certain exceptions, discrimination on the basis of sex (including pregnancy, sexual orientation, and gender identity) in any education program or activity receiving Federal financial assistance (FFA), whether or not such program or activity is offered or sponsored by an educational institution as defined in the Title IX regulations. Except as provided in §§ 5.205 through 5.235(a), the Title IX regulations apply to every recipient and to each education program or activity operated by the recipient that receives FFA from the Nuclear Regulatory Commission (NRC).

The NRC enforces provisions covered by Title IX and 10 CFR 5. In order to do so, the NRC must engage in information and data collections, as necessary, to determine whether a recipient is complying with the regulations. Recipients are required to maintain on file, make available for inspection and provide to responsible NRC officials upon request information and documents related to investigative, compliance and enforcement provisions. Recipients are also required to permit reasonable access by NRC to the recipient's books, records, accounts, facilities, and other sources of information to the extent necessary to determine compliance. Recipients are required to keep records and submit to the responsible NRC official, timely, complete, and accurate compliance reports at the times and in the form and containing the information that the responsible NRC official may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with the regulations. Three reoccurring recipient collections that take place include: 1) Pre-Award Compliance Review Process, wherein documents and assurances are provided to determine there are no "red flags" or issues concerning discrimination prior to an NRC award of Federal financial assistance (See NRC Form 781) (Parts A, B, and C ((SBCR Compliance Review Part C Additional Title IX Information))); 2) Post-Award Compliance Process, wherein recipients' program operations are routinely monitored to ensure nondiscrimination during the award phase and compliance with regulations and mandates; and 3) Recipients are mandated to submit annual EO compliance report to SBCR no later than December 31 each calendar year. In addition, if NRC receives a complaint alleging discrimination (See NRC Form 782), or conducts an investigation, or conducts a periodic compliance review the affected recipients are required to provide requested information and documentation.

The purpose for collecting this information is to ensure that recipients of Federal financial assistance operate their programs and activities in a non-discriminatory manner. NRC Form 782 outlines the responsibilities of the recipient under the law to engage in fair practices and provides the NRC with another vehicle to assess recipient programs. Each applicant/recipient is assigned a case file in which this form is filed. Each request is assigned an SBCR compliance review number which reflects the year of the request, month of the request, and the numerical order of receipt of the request. Case files are maintained in paper form in a locked file cabinet.

All recipients of Federal financial assistance from the Nuclear Regulatory Commission (NRC) are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any. Failure to include a type of Federal assistance in the list indicated below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX. The following is a list of Federal financial assistance administered by the NRC to which Title IX applies:

- (a) Conferences on regulatory programs and related matters: Agreements for financial assistance to State and local officials, without full-cost recovery, to confer on regulatory programs and related matters at NRC facilities and offices, or other locations.
- (b) Orientations and instruction: Agreements for financial assistance to State and local officials, without full-cost recovery, to receive orientation and on-the-job instruction at NRC facilities and offices, or other locations.
- (c) Technical training courses: Agreements for financial assistance to State and local officials, without full-cost recovery, to receive orientation and on-the-job instruction at NRC facilities and offices, or other locations.
- (d) Participation in meetings and conferences: Agreements for participation, without full-cost recovery, in meetings, conferences, workshops, and symposia to assist scientific, professional or educational institutions or groups.
- (e) Research support: Agreements for the financial support of basic and applied scientific research and for the exchanges of scientific information.
- (f) Educational Institutions: Agreements for financial assistance to education institutions to include applicants or recipient that is an institution of higher education, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection of Information. The reporting and recordkeeping requirements are necessary in order for NRC staff to assure that the recipients of Federal financial assistance are in compliance with Title IX of the Education Amendments of 1972, as amended.

The currently effective information collection requirements of Part 5 are identified and explained below:

Section 5.110(c)(1)(2)(3) Each recipient educational institution shall within one year of September 29, 2000: (1) evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient=s education program or activity; (2) modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations and (3) take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

Section 5.110(d) Recipients shall maintain on file for at least three years following its completion, the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

Section 5.115(a) Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with 5.110 (a) to eliminate existing discrimination, whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

Section 5.115(b)(1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

Section 5.115(c)(1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to Title IX of the Education Amendments of 1972, as amended.

Section 5.135(a) Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigations of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations. The recipient shall notify all its students and employees of the

name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

Section 5.135(b) A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the Title IX regulations.

Section 5.140(a)(1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless Sections 5.300 through 5.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to Section 5.135, or to the designated agency official.

Section 5.140(a)(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in: (i) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (ii) memoranda or other written communications distributed to every student and employee of such recipient.

Section 5.140(b)(1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with recruitment of students or employees.

Section 5.140(c) Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Section 5.205(b) An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the

highest ranking official of the institution, identifying the provisions of the Title IX regulations that conflict with a specific tenet of the religious organization.

Section 5.230(a) An institution to which Section 5.225 applies and that is composed of more than one administrative separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

Section 5.230(b)(1) In order to be approved by the Secretary of Education, a transition plan shall: (1) State the name, address and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

Section 5.230(b)(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

Section 5.230(b)(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

Section 5.230(b)(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

Section 5.230(b)(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

Section 5.230(d) To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which Section 5.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

Section 5.400(d)(2)(i) Such recipient: (i) shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking and (ii) shall not facilitate, require, permit, or consider such participation if such action occurs. Section 5.425(b): A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their

sex or use materials that permit or require different materials that cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

Section 5.430(b)(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which: (i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to member of a particular sex; (ii) an appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and (iii) no student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that students sex.

Section 5.445(b)(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

2. Agency Use of Information

The information is used to incorporate the basic standards for determining sex discrimination, and is designed to provide guidance to recipients of money paid, property transferred, or other Federal financial assistance extended under any program or activity, by way of grant, entitlement, cooperative agreement, loan, contract, or other agreement by NRC, or an authorized contractor or subcontractor of NRC.

3. Reduction of Burden Through Information Technology

The NRC has issued Guidance for Electronic Submissions to the NRC which provides direction for the electronic transmission and submittal of documents to the NRC. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange (EIE) process, which is available from the NRC's "Electronic Submittals" Web page, <https://www.nrc.gov/site-help/e-submittals.html> or by e-mail to EEOProgram.Resource@nrc.gov. It is estimated that approximately 100% of the responses are filed electronically.

4. Efforts to Identify Duplication and Use of Similar Information

No sources of similar information are available. There is no duplication of requirements.

5. Efforts to Reduce Small Business Burden

The information collection does not involve small businesses or other small entities.

6. Consequences to Federal Program or Policy Activities if the Collection is not Conducted or is Conducted Less Frequently

There is no specific time frame for collection. The required information is submitted upon applying for FFA and continues for the period that such assistance is provided by the Commission. The proposed collection of information is necessary to ensure nondiscrimination and compliance with Federal civil rights regulations in NRC's FFA programs and activities.

7. Circumstances which Justify Variation from OMB Guidelines

There are no variations from OMB guidelines.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package was published in the Federal Register.

9. Payment or Gift to Respondents

Not Applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

11. Justification for Sensitive Questions

Not applicable

12. Estimate of Burden.

Each of the 200 respondents will be required to submit 3 reports a year¹ for all the 10 CFR reporting requirements under Sections 5.110; 5.115; 5.205; and 5.230. The estimated number of responses is 1,000 (see Table 3). The total annual reporting burden is 18,000 hours (see Table 3 for distribution of hours per section) with an estimated annual cost of \$518,400 (18,000 hours x \$288).

Each of the 200 recipient respondents will maintain the records required under 10 CFR 5. Where a recipient makes available Federal financial assistance from NRC to a subrecipient, the recipient shall provide the subrecipient written notice of the subrecipient's obligations under Title IX and NRC's regulations. The burden for these third-party collections are listed in table 5 which shows 200 responses x .25 hours per response. The estimated number of 3rd Party Disclosure is 50 hours for a cost of \$14,400. The estimated number of recordkeepers is 200. The total annual recordkeeping burden is 1,600 hours (See Table 4) with an estimated annual cost of \$460,800 (1,600 hours x \$288).

The overall estimated burden is 3,450 hours (1,800 hours reporting + 1,600 hours recordkeeping + 50 hours 3rd Party Disclosure) for an estimated total cost of \$993,600 (3,450 hours x \$288). The estimated cost for each respondent is \$5,184 (\$1,036,800 / 200 respondents) See Table 1.

The total number of responses is 1,400 (1,000 reporting responses + 200 recordkeepers + 200 3rd Party Disclosure) See table 1.

The \$288 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour." For more information on the basis of this rate, see the Revision of Fee Schedules; Fee Recovery for Fiscal Year 2021 (86 FR 32146, June 17, 2021).

¹ Each recipient is required to submit requirements during the Pre-Award process, the Post-Award process, an Annual EO report, and other collections, if requested (e.g. investigate and correct violations, complaint filed, etc.). At a minimum, 3 reports and 3 collections are required unless the NRC determines information is necessary to satisfy a complaint, investigate or correct a violation, or other information as needed.

Table 3. Annual Reporting Burden

Section	Description	Respondents	Responses per respondent	Responses	Burden hours per response	Burden
5.110 (c)(1)(2)(3)	Self-evaluation (Evaluate requirements, Modify policies and practices, and take appropriate steps to eliminate effects of any discrimination	200	1	200	5	1000
5.135 (a), (b)	Designate at least one employee to coordinate efforts to comply with and carry out Title IX responsibilities.					
5.230(a), (b)(1)(2)(3)(4)(5), (d)	Transition plan					
Total		200		200	5	1000

Table 4. Annual Recordkeeping Burden

Section	Description	Recordkeepers	Hours per recordkeeper	Burden	Retention period
5.110 (d)	Records of Self-evaluation (Evaluate requirements, Modify policies and practices, and take appropriate steps to eliminate effects of any discrimination				
5.400 (d)92(i); 5.425(b)	Maintenance of records of nondiscriminatory programs or activities, testing or other materials for appraising or counseling students, and financial awards to students				
5.430(b)(2)	Maintenance of records of nondiscriminatory financial awards to students.				
5.445(b)(2)	Maintenance of records of medical histories				
Total		200	5	1000	3
		200		1000	

Table 5. Annual Third-Party Disclosure Burden

Section	Description	Respondents	Responses per respondent	Responses	Burden hours per response	Burden
5.140(a)(1)(2), (b)(1), (c)	Ensure applicants, students, and employees are aware of Title IX policies and procedures.	200	1	200	0.25	50
Total				200		50

Table 1. Total Annual Burden and Responses

	Responses	Burden	Cost at \$288/hr
Reporting	200	1000	\$288,000
Recordkeeping	200	1000	\$288,000
Third Party Disclosure	200	50	\$14,400
Total	600	2050	\$590,400

13. Estimate of Other Additional Costs

The quantity of records to be maintained is roughly proportional to the recordkeeping burden. Based on the number of pages maintained for a typical clearance, the records storage cost has been determined to be equal to .0004 times the recordkeeping burden cost. Therefore, the storage cost for this clearance is \$69.12 (600 recordkeeping hours x .0004 x \$288).

14. Estimated Annualized Cost to the Federal Government

The staff has developed estimates of annualized costs to the Federal Government related to the conduct of this collection of information. These estimates are based on staff experience and subject matter expertise and include the burden needed to review, analyze, and process the collected information and any relevant operational expenses. Staff estimates that it requires 5 hours of professional effort to review each report. To review 600 reports requires 3,000 staff hours (600 reports x 5 hours) at a cost of \$864,000 (3,000 hours x \$288/hr).

15. Reasons for Change in Burden

There are 400 less responses estimated in the burden since the last renewal but the burden hours have decreased by 1,550 hours. The amount of reporting decreased due to the agency reducing the amount of grant awards provided. There is a decrease of 400 burden hours for recordkeeping. This is due to the agency adjusting the numbers to correct the estimates from the last renewal. Additionally, third party disclosure wasn't accounted for in the last renewal (see Table 2) but broken out for this renewal. Finally, Forms 781 and 782 have been removed from this clearance due to it being included in the Part 4 clearance. The professional hourly rate increased from \$279 per hour to \$288 per hour.

	Table 2. Change in Burden and Responses					
	2018 renewal		Current submission		Change	
	Responses	Burden	Responses	Burden	Responses	Burden
Reporting	600	3,000	200	1,000	-400	-2,000
Recordkeeping	200	600	200	1,000	0	-400
Third Party Disclosure	0	0	200	50	200	50
Total	800	3,600	600	2,050	-200	-1,550

16. Publication for Statistical Use

There are no plans to publish the information received from licensees pursuant to these reporting requirements.

17. Reason for Not Displaying the Expiration Date.

The requirement will be contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement.

There are no exceptions.