

Subpart B—Standards for Determining Age Discrimination

§ 146.11 Scope of subpart.

This subpart contains the standards that HUD will use to determine whether an age distinction, or a factor other than age that may have a disproportionate effect on persons of different ages, is prohibited.

§ 146.13 Rules against age discrimination.

(a) The rules stated in this paragraph are limited by the exceptions contained in paragraphs (b) and (c) of this section.

(1) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(2) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contracting, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of:

(i) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(ii) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (a)(2) of this section do not necessarily constitute a complete list.

(b) *Exceptions for normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by paragraph (a) of this section if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristics can be reasonably measured or approximated by the use of age; and

(4) The other characteristics are impractical to measure directly on an individual basis.

(c) *Exceptions for reasonable factors other than age.* A recipient is permitted to take action otherwise prohibited by paragraph (a) of this section if the action is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective.

(d) *Burden of proof.* The burden of proving that an age distinction or other action falls within an exception described in paragraph (b) or (c) of this section is on the recipient of Federal financial assistance.

(e) For the purposes of paragraphs (b) and (c), *normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its statutory objectives. *Statutory objectives* means any purpose of a program or activity expressly stated in any Federal, State, or local statute adopted by an elected, general purpose legislative body.

(f) Notwithstanding paragraph (b) of this section, if a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program.

Subpart C—Duties of HUD Recipients

§ 146.21 General responsibilities.

Each recipient has primary responsibility to ensure that its programs and

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activities that receive Federal financial assistance from HUD comply with the provisions of the Act, the government-wide regulation, and this part, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HUD access to its records to the extent HUD finds necessary to determine whether a program or activity receiving Federal financial assistance from HUD is in compliance with the Act and this part.

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[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

§ 146.23 Notice of subrecipients.

Whenever a recipient passes Federal financial assistance from HUD to subrecipients, the recipient shall provide the subrecipient with written notice of its obligations under this part and the recipient will remain responsible for the subrecipient's compliance with respect to programs and activities receiving Federal financial assistance from HUD.

§ 146.25 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HUD shall sign a written assurance as specified by HUD that it will comply with the Act and this part with respect to programs and activities receiving Federal financial assistance from HUD.

(b) As part of a compliance review under § 146.31 or an investigation under § 146.37, HUD may require a recipient employing the equivalent of 15 or more employees to complete, in a manner specified by the Secretary or Secretary's designee, a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from HUD, so that HUD may have to assess the recipient's compliance with the Act. Whenever an assessment indicates a violation of the Act or this part, the

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recipient shall take corrective action to remedy the violation.

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§ 146.27 Information requirements.

In order to make it possible for HUD to determine whether recipients are in compliance with the Act and this part, each recipient shall:

(a) Keep records in a form and containing information that HUD determines is necessary;

(b) Make information available to HUD upon request;

(c) Permit reasonable access by HUD to the books, records, accounts and other recipient facilities and sources of information.

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[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

Subpart D—Investigation, Settlement, and Enforcement Procedures

§ 146.31 Compliance reviews.

(a) HUD may conduct pre-award reviews to determine whether programs or activities submitted for HUD assistance are consistent with the age distinctions set forth at § 146.13(b).

(b) If a pre-award review indicates that the proposed programs or activities are not consistent with the age distinctions set forth at § 146.13(b), the application will be returned to the applicant for additional information or clarification or for correction consistent with this part.

(c) HUD may conduct compliance reviews of recipients that will enable it to investigate and correct violations of this part. HUD may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary for HUD to determine whether a violation has occurred.

(d) If a compliance review indicates a violation, HUD will attempt to achieve voluntary compliance. If voluntary