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(k) *Sub-recipient* means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance and has all the duties of a recipient in the regulations in this part.

(l) *Endowment* means the National Endowment for the Arts.

(m) *Chairperson* means the Chairperson of the National Endowment for the Arts.

(n) *Secretary* means the Secretary of the Department of Health and Human Services.

(o) *United States* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Federated States of Micronesia and the Republic of Palau, the Northern Marianas, and the territories and possessions of the United States.

[63 FR 6876, Feb. 11, 1998, as amended at 68 FR 51385, Aug. 26, 2003]

§ 1156.4 [Reserved]

Subpart B—Standards for Determining Discriminatory Practices

§ 1156.5 Purpose.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 1156.6 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1156.7 (b) and (c).

(a) *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.

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

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a pro-

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gram or activity receiving Federal financial assistance; or

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

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list of discriminatory actions.

§ 1156.7 Exceptions to the rules against age discrimination.

(a) *Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 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, if:

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

(2) The other characteristic(s) 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 characteristic(s) can be reasonably measured or approximated by the use of age; and

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

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 which 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 to the achievement of a statutory objective.

(c) *Remedial and affirmative action by recipients.* If a recipient operating a program or activity which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have

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the effect of excluding otherwise eligible persons from participation in the program or activity.

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§ 1156.8 Burden of proof.

The recipient of Federal financial assistance bears the burden of proving that an age distinction or other action falls within the exceptions outlined in § 1156.7.

Subpart C—Responsibilities of Endowment Recipients

§ 1156.9 [Reserved]

§ 1156.10 General responsibilities.

A recipient has primary responsibility to ensure that its programs or activities are in compliance with the Age Discrimination Act, to take steps to eliminate violations of the Act, and to provide notice to beneficiaries of its programs and activities concerning protection against discrimination provided by the Act and the regulations in this part. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Endowment to the extent required to determine whether it is in compliance with the Act.

[63 FR 6876, Feb. 11, 1998, as amended at 68 FR 51385, Aug. 26, 2003]

§ 1156.11 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from the Endowment to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligations under the Act and the regulations in this part.

§ 1156.12 Self-evaluation.

(a) Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation, in a manner specified by the responsible Endowment official during the course of an investigation, of any age distinction imposed in its program or activity receiving Federal financial assistance from the Endowment to assess the recipient's compliance with the Act.

(b) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(c) Each recipient shall make the self-evaluation available on request to the Endowment and to the public for a period of three years following its completion.

§ 1156.13 Information requirements.

Each recipient shall:

(a) Make available to the Endowment, upon request, information necessary to determine whether the recipient is complying with the regulations in this part.

(b) Permit reasonable access by the Endowment to the books, accounts and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 1156.14 Compliance reviews.

The Endowment may conduct compliance reviews, pre-award reviews and other similar procedures in order to investigate and correct violations of the Act and regulations. The Endowment may conduct these reviews in the absence of a complaint against the recipient. In the event a compliance review or pre-award review indicates a violation of the regulations in this part, the Endowment will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, enforcement efforts will proceed as described in § 1156.19.

§ 1156.15 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the Endowment, alleging discrimination prohibited by the Act and the regulations in this part based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date that the complainant first had knowledge of the alleged act of discrimination. However, for good cause, the Endowment may