

§617.1

APPENDIX I TO PART 617—LIST OF AGE DISTINCTIONS PROVIDED IN FEDERAL STATUTES OR REGULATIONS AFFECTING FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY NSF

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90.

SOURCE: 49 FR 49628, Dec. 21, 1984, unless otherwise noted.

§617.1 Purpose.

This part prescribes NSF's policies and procedures under the Age Discrimination Act of 1975 and the Department of Health and Human Services government-wide age discrimination regulations at 45 CFR part 90. The Act and part 90 prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and part 90 permit federally assisted programs or activities and recipients of Federal funds to continue to use age distinctions and factors other than age which meet the requirements of the Act and part 90.

[49 FR 49628, Dec. 21, 1984, as amended at 68 FR 51383, Aug. 26, 2003]

§617.2 Definitions.

The following terms used in this part are defined in part 90:

Act
Action
Age
Age distinction
Age-related term
Agency
Federal financial assistance
Program or activity
Recipient (including subrecipients)
United States

[49 FR 49628, Dec. 21, 1984, as amended at 68 FR 51383, Aug. 26, 2003]

§617.3 Standards.

Standards for determining whether an age distinction or age-related term is prohibited are set out in part 90 of this title 45. See also appendix I to this part.

§617.4 General duties of recipients.

Each recipient of Federal financial assistance from NSF shall comply with the Act, part 90, and this part. Each NSF award of Federal financial assist-

45 CFR Ch. VI (10-1-03 Edition)

ance shall contain the following provision:

COMPLIANCE WITH AGE DISCRIMINATION ACT

The recipient agrees to comply with the Age Discrimination Act of 1975 as implemented by the Department of Health and Human Services regulations at 45 CFR part 90 and the regulations of the Foundation at 45 CFR part 617. In the event the recipient passes on NSF financial assistance to subrecipients, this provision shall apply to the subrecipients, and the instrument under which the Federal financial assistance is passed to the subrecipient shall contain a provision identical to this provision.

§617.5 Self-evaluation.

(a) Each recipient (including subrecipients) employing the equivalent of fifteen or more full-time employees shall complete a written self-evaluation of its compliance under this part within 18 months of the effective date of these regulations, unless a similar evaluation has been completed for another agency.

(b) In its self-evaluation, each recipient shall identify all age distinctions it uses and justify each age distinction it imposes on the program or activity receiving Federal financial assistance from NSF.

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

(d) Each recipient shall make the self-evaluation available on request to NSF and the public for three years after its completion.

§617.6 Information requirements.

Each recipient shall:

(a) Make available upon request to NSF information necessary to determine whether the recipient is complying with the Act.

(b) Permit reasonable access by NSF or its designee to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is complying with the Act.

§617.7 Compliance reviews.

(a) NSF may conduct compliance reviews of recipients that will permit it to investigate and correct violations of

National Science Foundation

§ 617.10

the Act. NSF may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of the Act has occurred.

(b) If a compliance review indicates a violation of the Act, NSF will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, NSF may arrange for enforcement as described in § 617.12.

§ 617.8 Pre-award reviews.

NSF reserves the right to conduct pre-award reviews of applicants for Federal financial assistance from NSF in cases where the NSF has substantial reason to believe that a potential recipient who is not then a recipient of other NSF financial assistance under the same program or activity may engage in practices under that program or activity that would violate the Act. However, the results of any such review shall not constitute a basis for NSF refusal to grant financial assistance to the applicant under that program or activity unless the procedural requirements of the Act (42 U.S.C. 6104) and §§ 617.12 and 617.13 of this part have been followed.

[49 FR 49628, Dec. 21, 1984, as amended at 68 FR 51383, Aug. 26, 2003]

§ 617.9 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NSF, alleging discrimination prohibited by the Act. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NSF may extend this time limit.

(b) NSF will accept as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant. If an insufficient complaint is amended within 10 working days after notice by NSF to the complainant of the deficiency, NSF will consider the amended complaint as filed on the date the original insuffi-

cient complaint was filed for purposes of determining if it was timely filed. However, all other time requirements established by the Act and this part shall run from the date the amended complaint was filed.

(c) On receipt of any complaint NSF shall promptly send written acknowledgement to the complainant, and a copy of the complaint to the recipient. In addition, NSF shall send either copies of this part or other pertinent information describing the rights and obligations of the parties.

(d) NSF will return to the complainant any complaint outside the coverage of this part, and will state why it is outside the coverage of this part.

§ 617.10 Mediation.

(a) NSF will refer to the Federal Mediation and Conciliation Service all complaints that fall within the jurisdiction of this part and contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or for a mediator to make an informed judgement that an agreement is not possible. NSF will take no further administrative action on any complaint if the complainant refuses to participate in the mediation process.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NSF. NSF shall take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement, in which case the other party may request that the complaint be reopened.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the Federal Mediation and Conciliation Service.