

§ 146.21

(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 activities that receive Federal finan-

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cial 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.

(Approved by the Office of Management and Budget under control number 2529–0030)

[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