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programs or activities receiving federal financial assistance.

(b) The Secretary of Health and Human Services has issued a general regulation (45 CFR part 90) to guide other federal agencies regarding implementation of the Act. This subpart is generally based upon that general regulation.

§ 42.701 Application.

(a) This subpart applies to each program or activity that receives federal financial assistance from the Department of Justice.

(b) This subpart does not apply to employment practices, except to those occurring in programs or activities that receive federal financial assistance under the Job Training Partnership Act.

§ 42.702 Definitions.

As used in this subpart, the term:

Act means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101-6107.

Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

Age distinction means any action using age or an age-related term.

Age-related term means a term that necessarily implies a particular age or range of ages (e.g., "youth," "juvenile," "adult," "older persons," but not "student").

Department means the Department of Justice.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides assistance in the form of:

- (1) Funds;
- (2) Services of federal personnel; or
- (3) Real or personal property or any interest in or use of such property, including—
 - (i) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is

not returned to the federal government.

FMCS means the Federal Mediation and Conciliation Service.

OJP means the Office of Justice Programs. OJP coordinates the work of the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention; OJP includes the Office for Victims of Crime.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Recipient means any state or political subdivision, any instrumentality of a

Department of Justice

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State or political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. "Recipient" includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

Secretary means the Secretary of Health and Human Services or his or her designee.

United States means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

[Order No. 1843-94, 59 FR 6560, Feb. 11, 1994, as amended by Order 2679-2003, 68 FR 51366, Aug. 26, 2003]

§§ 42.703–42.709 [Reserved]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 42.710 General prohibition.

(a) Subject to the exceptions discussed in §§ 42.711–42.713, 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 in any program or activity to which this subpart applies. This prohibition applies to actions taken by a recipient, directly or through contractual or other arrangements, that have the purpose or effect of discriminating on the basis of age.

(b) This prohibition encompasses treatment of elderly persons, children and any other age group. Unless one of the exception applies, the recipient may use neither a minimum age limit nor a maximum age limit in connection with receipt of benefits or services or other participation in a program or activity subject to this subpart.

§ 42.711 Exception; authorized by law.

(a) This subpart does not apply to an age distinction contained in a portion of a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose legislative body which portion:

(1) Provides any benefits or assistance to persons on the basis of age;

(2) Establishes criteria for participation in age-related terms; or

(3) Describes intended beneficiaries or target groups in age-related terms.

(b) The exception set forth in paragraph (a) of this section does not extend to regulations adopted by an administrative agency pursuant to a specific statutory provision or otherwise.

§ 42.712 Exception; normal operation or statutory objective.

(a) A recipient may take an action that would otherwise be prohibited by § 42.710(a), if such action reasonably takes age into account as a factor necessary to the normal operation of or the achievement of any statutory objective of the program or activity.

(1) *Normal operation* refers to the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) A *statutory objective* of a program or activity is a purpose that is expressly stated in a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose body.

(b) This exception applies when the following test is met—

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

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

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

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

(c) The question whether an age distinction comes within this section depends upon the particular facts, including the nature and purpose of the program or activity, the basis for and the nature and purpose of the age distinction, and the manner in which the age distinction is used.