

§4.314

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—

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

(b) 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

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

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

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

§4.314 Exceptions to the rule against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by §4.311 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.

§4.315 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§4.313 and 4.314 is on the recipient of Federal financial assistance.

DUTIES OF NRC RECIPIENTS

§4.321 Assurance of compliance.

Each NRC recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and these regulations. Each recipient will sign an assurance of compliance that its programs or activities will be conducted in compli-

10 CFR Ch. I (1–1–06 Edition)

ance with all the requirements imposed by the Act and these regulations. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to NRC, to the extent required to determine whether it is in compliance with the Act and these regulations.

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

§4.322 Written notice, technical assistance, and educational materials.

(a) NRC will provide written notice to each recipient of its obligations under the Act and these regulations, including its obligation under paragraph (b) of this section.

(b) Where a recipient makes available Federal financial assistance from NRC to a subrecipient, the recipient shall provide the subrecipient written notice of the subrecipient's obligations under the Act and these regulations.

(c) NRC will provide technical assistance, where necessary, to recipients to aid them in complying with the Act and these regulations.

(d) NRC will make available educational materials which set forth the rights and obligations of recipients and beneficiaries under the Act and these regulations.

§4.324 Information requirements.

Each recipient shall:

(a) Make available upon request to NRC information necessary to determine whether the recipient is complying with the Act and these regulations.

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

INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES

§4.331 Compliance reviews.

(a) NRC may conduct compliance reviews and preaward reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NRC may conduct these

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

(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, NRC will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, NRC will arrange for enforcement as described in § 4.336.

§ 4.332 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NRC, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. 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, NRC may extend this time limit.

(b) NRC will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting a complaint as sufficient for further processing that—

- (i) Is made in writing;
- (ii) Alleges a violation of the Act;
- (iii) Identifies the parties involved and the date the complainant first had knowledge of the alleged violation;
- (iv) Describes generally the action or practice complained of; and
- (v) Is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedures.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact NRC for information and assistance regarding the complaint resolution process.

(c) Each recipient and complainant shall participate actively in efforts to-

ward speedy resolution of the complaint.

(d) NRC will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 4.333 Mediation.

(a) Referral of complaints for mediation. NRC will refer to a mediation agency designated by the Secretary of the Department of Health and Human Services all complaints that—

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) 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 make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NRC will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(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 NRC. NRC will take no further action on the complaint unless the complainant or recipient fails to comply with the agreement.

(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 agency appointing the mediator.

(e) NRC will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if—

(1) From the time NRC receives the complaint 60 days elapse; or

(2) Prior to the end of that 60-day period, the mediator determines an agreement is reached; or