

§ 117.7

affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

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

§ 117.7 Assurances required.

An application for financial assistance administered by the Small Business Administration shall, as a condition of its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. SBA shall specify the form of the foregoing assurance, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors, and other participants.

§ 117.8 Responsibilities of SBA recipients.

(a) Each SBA recipient has the primary responsibility to ensure that its programs or activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford SBA access to its records to the extent SBA finds necessary to determine whether the recipient is in compliance with the Act and these regulations. (OMB No. 3245 0076)

(b) Where a recipient passes on Federal financial assistance from SBA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(c) Each recipient shall make necessary information about the Act and these regulations available to the beneficiaries of its programs or activities in order to inform them about the protections against discrimination provided by the Act and these regulations.

13 CFR Ch. I (1-1-07 Edition)

(d) Whenever an assessment indicates a violation of the Act and the SBA regulations, the recipient shall take corrective action.

§ 117.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Record Keeping.* Each recipient shall keep records in such form, and containing such information which SBA determines may be necessary to ascertain whether the recipient has complied or is complying with this part (OMB No. 3245 0076). In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, the small business concern shall also keep such records and information as may be necessary to enable SBA to determine if the small business concern is complying with this part.

(c) Each recipient shall provide to SBA, upon request, information and reports which SBA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) *Access to sources of information.* Each recipient shall permit reasonable access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish the information, the recipient shall so certify and shall set forth what efforts it has made to obtain the required information. The recipient will be held responsible for submitting the information. Failure to submit information or permit access to sources of information required by SBA

Small Business Administration

§ 117.12

will subject the recipient to enforcement procedure as provided in §117.15 of this part.

(Information collection requirements in paragraph (c) were approved by the Office of Management and Budget under control number 3245-0076)

§ 117.10 Review procedures.

(a) SBA shall from time to time review the practices of recipients to determine whether they are complying with this part. As part of a compliance review or complaint investigation, SBA may require a recipient employing 15 or more full-time employees to complete a written self-evaluation, in a manner specified by the Agency, of any age distinction imposed in its program or activity receiving Federal financial assistance.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance with the Act. If voluntary compliance with the recipient cannot be achieved, such recipient will be subject to the enforcement procedure contained in §117.15 of these regulations. A refusal to permit an on-site compliance review during normal working hours may constitute noncompliance with this part.

§ 117.11 Complaint procedures.

(a) Any person who believes that he/she or any specific class of individuals is being or has been subjected to discrimination by SBA, a recipient, or an applicant for assistance, prohibited by this part may, by himself/herself or by a representative, file with SBA a written complaint. The complainant has the right to have a representative at all stages of the complaint procedure.

(b) A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time filing is extended by SBA. The Administrator, the Director, Office of Equal Employment Opportunity and Compliance, and the Chief, Office of Civil Rights Compliance, are the only officials who may waive the 180-day time limit for filing complaints under this part. SBA will consider the date a complaint is filed to be the date upon

which the complaint is sufficient to be processed.

(c) Each complaint will be reviewed to ensure that it falls within the coverage of the Act and contains all information necessary for further processing.

(d) SBA will attempt to facilitate the filing of complaints wherever possible, including taking the following actions:

(1) Accepting 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.

(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 procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact the Chief, Office of Civil Rights Compliance, for information and assistance regarding the complaint resolution process.

(e) SBA will return to the complainant any complaint filed under the jurisdiction of this regulation, but found to be outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

§ 117.12 Mediation.

(a) SBA shall, after ensuring that the complaint falls within the coverage of this Act and all information necessary for further processing is contained therein, unless the age distinction complained of is clearly within an exception, promptly refer the complaint to the Federal Mediation and Conciliation Service (FMCS).

(b) SBA shall, to the extent possible, require the participation of the recipient and the complainant in the mediation process in an effort to reach a mutually satisfactory settlement of the complaint or make an informed