

§ 90.48

recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New Federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

§ 90.48 Alternate funds disbursal procedure.

When an agency withholds funds from a recipient under its regulations issued under § 90.31, the head of the agency may disburse the withheld funds so directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

§ 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has dis-

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criminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take 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.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

§ 90.50 Exhaustion of administrative remedies.

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If either of the conditions set forth in § 90.50(a) is satisfied the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days