

**Subpart C - Nondiscrimination on the Basis of Age**

*General*

- 17.300 What is the purpose of the Age Discrimination Act of 1975?
- 17.301 What is the purpose of DOI's age discrimination regulations?
- 17.302 To what programs do these regulations apply?
- 17.303 Definitions.

*Standards for Determining Age Discrimination*

- 17.310 Rules against age discrimination.
- 17.311 Exceptions to the rules against age discrimination.
- 17.312 Burden of proof.
- 17.313 Special benefits for children and the elderly.
- 17.314 Age distinctions contained in DOI regulations.
- 17.315 Affirmative action by recipients.

*Duties of DOI Recipients*

- 17.320 General responsibilities.
- 17.321 Notice to subrecipients and beneficiaries.
- 17.322 Assurance of compliance and recipient assessment of age distinctions.
- 17.323 Information collection requirements.

*Investigation, Conciliation, and Enforcement Procedures*

- 17.330 Compliance reviews.
- 17.331 Complaints.
- 17.332 Mediation.
- 17.333 Investigation.
- 17.334 Prohibition against intimidation or retaliation.
- 17.335 Compliance procedure.
- 17.336 Hearings, decisions, post-termination proceedings.
- 17.337 Remedial action by recipients.
- 17.338 Alternate funds disbursement procedure.
- 17.339 Exhaustion of administrative remedies.

**Subpart C-Nondiscrimination on the Basis of Age**

**AUTHORITY:** Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.; 45 CFR part 90.

**SOURCE:** 54 FR 3598, Jan. 25, 1989, unless otherwise noted.

General

**▲ 17.300 What is the purpose of the Age Discrimination Act of 1975?**

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

**▲ 17.301 What is the purpose of DOI's age discrimination regulations?**

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal

funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

**▲ 17.302 To what programs do these regulations apply?**

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or,

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

(iii) Describes intended beneficiaries or target groups in age-related terms; or

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 et seq.).

**▲ 17.303 Definitions.**

As used in these regulations, the term:

(a) Act means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94 135).

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

(c) Age means how old a person is, or the number of years from the date of a person's birth.

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

(e) Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) Discrimination means unlawful treatment based on age.

(g) DOI means the United States Department of the Interior.

(h) 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 agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of 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.

(i) FMCS means the Federal Mediation and Conciliation Service.

(j) Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) Secretary means the Secretary of the Department of the Interior or his or her designee.

(l) Subrecipient means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) United States means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

#### Standards for Determining Age Discrimination

#### ▲ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in ▲17.311.

(a) General rule. 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 under any program or activity receiving Federal financial assistance.

(b) Specific rules. A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

- (1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or
- (2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

#### ▲ 17.311 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

- (1) Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.
- (2) Statutory objective means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by ▲ 17.310 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:

- (1) Age is used as a measure or approximation of one or more other characteristics; and
- (2) 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
- (3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
- (4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Exceptions to the rules against age discrimination: Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by ▲ 17.310 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.

#### ▲ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in ▲17.311(b) and 17.311(c), is on the recipient of Federal financial assistance.

#### ▲ 17.313 Special benefits for children and the elderly.

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, notwithstanding the provisions of ▲17.311.

**▲17.314 Age distinctions contained in DOI regulations.**

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of ▲17.311.

**▲17.315 Affirmative action by recipients.**

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.

## **Duties of DOI Recipients**

**▲17.320 General responsibilities.**

Each DOI recipient has primary responsibility to ensure that its programs and 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 DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

**▲17.321 Notice to subrecipients and beneficiaries.**

- (a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.
- (b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

**▲17.322 Assurance of compliance and recipient assessment of age distinctions.**

- (a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.
- (b) Recipient assessment of age distinctions. (1) As part of a compliance review under ▲17.330 or complaint investigation under ▲17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.  
(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

**▲17.323 Information collection requirements.**

Each recipient shall:

- (a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.
- (b) Provide to DOI, upon request, information and reports which DOI determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.
- (c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.
- (d) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1084 0027. The information will be collected and used to assess recipients' compliance with the Act. Response is required to

obtain a benefit.

(e) Public reporting burden for this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed; and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Departmental Clearance Officer, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Mail Stop 2242; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Investigation, Conciliation, and Enforcement Procedures

**▲17.330 Compliance reviews.**

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in ▲17.335.

**▲17.331 Complaints.**

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

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

(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, as described in paragraphs (a) and (c)(1) of this section.

(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 DOI for information and assistance regarding the complaint resolution process.

(d) DOI 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.

**▲ 17.332 Mediation.**

(a) Referral of complaints for mediation. DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; 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.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI.

DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS 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 mediation agency.

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

- (1) 60 days elapse from the time the complaint is filed; or
- (2) Prior to the end of that 60 day period, an agreement is reached; or
- (3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

**▲ 17.333 Investigation.**

(a) Informal investigation. (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) Formal investigation. If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in ▲17.335.

**▲ 17.334 Prohibition against intimidation or retaliation.**

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

**▲ 17.335 Compliance procedure.**

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under ▲ 17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section until:

- (1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.
- (2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under ▲ 17.335(a)(l) is initiated.

- (1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under ▲ 17.335(a)(1).
- (2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under ▲ 17.335(a)(1). DOI will not continue a deferral 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 Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

**▲ 17.336 Hearings, decisions, post-termination proceedings.**

Certain DOI procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR part 4, subpart I.

**▲ 17.337 Remedial action by recipients.**

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

**▲ 17.338 Alternate funds disbursement procedure.**

- (a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.
- (b) The Secretary will require any alternative recipient to demonstrate:
  - (1) The ability to comply with these regulations; and
  - (2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

**▲ 17.339 Exhaustion of administrative remedies.**

- (a) 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 DOI has made no finding with regard to the complaint; or
  - (2) DOI issues any finding in favor of the recipient.
- (b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:
  - (1) Promptly advise the complainant of this fact;
  - (2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and
  - (3) Inform the complainant:
    - (i) That he or she may bring a civil action only 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 the complainant must demand these costs in the complaint;

- (iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;
- (iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and
- (v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.