

**Age Discrimination Act of 1975 (42
U.S.C. §6101)**

Pub. L. 100-146, title IV, §402, Oct. 29, 1987, 101 Stat. 853; Pub. L. 101-496, §17, Oct. 31, 1990, 104 Stat. 1200; Pub. L. 103-230, title IV, §403, Apr. 6, 1994, 108 Stat. 320; Pub. L. 105-12, §9(l)(3), Apr. 30, 1997, 111 Stat. 28, provided for administration and operation grants.

A prior section 6062, Pub. L. 88-164, title I, §132, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1317; amended Pub. L. 94-103, title I, §110(b)-(e)(1), title III, §302(b)(1), Oct. 4, 1975, 89 Stat. 489, 490, 506; Pub. L. 94-278, title XI, §1107(a) Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, §510(b), Nov. 6, 1978, 92 Stat. 3010, related to allotments to States, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6063, Pub. L. 88-164, title I, §153, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2682; amended Pub. L. 100-146, title IV, §403, Oct. 29, 1987, 101 Stat. 855; Pub. L. 101-496, §18, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title IV, §404, Apr. 6, 1994, 108 Stat. 324, related to applications.

A prior section 6063, Pub. L. 88-164, title I, §133, formerly §134, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1319; renumbered §133 and amended Pub. L. 94-103, title I, §110(e)(2), 111, title III, §302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95-602, title V, §511, Nov. 6, 1978, 92 Stat. 3011, related to State plans, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6064, Pub. L. 88-164, title I, §154, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title IV, §404, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §19, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title IV, §405, Apr. 6, 1994, 108 Stat. 326, established the order of priorities for grant awards.

A prior section 6064, Pub. L. 88-164, title I, §134, formerly §137, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; amended Pub. L. 93-45, title III, §301(c), June 18, 1973, 87 Stat. 95; renumbered §134 and amended Pub. L. 94-103, title I, §§101(b), 113, title III, §302(a), Oct. 4, 1975, 89 Stat. 486, 492, 506; Pub. L. 94-278, title XI, §1107(b), (c), Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, §514(b), Nov. 6, 1978, 92 Stat. 3017, related to payments to the States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6065, Pub. L. 88-164, title I, §155, as added Pub. L. 103-230, title IV, §406, Apr. 6, 1994, 108 Stat. 327, defined "State".

A prior section 6065, Pub. L. 88-164, title I, §135, formerly §138, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; renumbered §135 and amended Pub. L. 94-103, title I, §§110(e)(3), 114, title III, §302(a), (b)(3), Oct. 4, 1975, 89 Stat. 490, 493, 506; Pub. L. 95-602, title V, §514(c), Nov. 6, 1978, 92 Stat. 3017, related to withholding of payments to States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6066, Pub. L. 88-164, title I, §156, as added Pub. L. 103-230, title IV, §406, Apr. 6, 1994, 108 Stat. 327; amended Pub. L. 104-183, §4, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

Prior sections 6066 to 6068 were omitted in the general amendment of this chapter by Pub. L. 98-527.

Section 6066, Pub. L. 88-164, title I, §136, formerly §140, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1324; renumbered §136 and amended Pub. L. 94-103, title I, §115, title III, §302(a), (b)(4), Oct. 4, 1975, 89 Stat. 493, 506, related to nonduplication of payments.

Section 6067, Pub. L. 88-164, title I, §137, formerly §141, as added and renumbered §137, Pub. L. 94-103, title I, §116, title III, §302(a), Oct. 4, 1975, 89 Stat. 493, 506; amended Pub. L. 95-602, title V, §512, Nov. 6, 1978, 92 Stat. 3015, related to State Planning Councils.

Section 6068, Pub. L. 88-164, title I, §138, formerly §142, as added, renumbered §138, and amended Pub. L. 94-103, title I, §117, title III, §302(a), (b)(5), Oct. 4, 1975, 89 Stat. 494, 506, related to appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by the Supreme Court, and stay of administrative action.

SUBCHAPTER V—PROJECTS OF NATIONAL SIGNIFICANCE

§§ 6081 to 6083. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6081, Pub. L. 88-164, title I, §161, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title V, §501(a), Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §20, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title V, §502, Apr. 6, 1994, 108 Stat. 328, stated the purpose of this subchapter.

A prior section 6081, Pub. L. 88-164, title I, §145, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 495; amended Pub. L. 95-602, title V, §§504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96-32, §3(a), July 10, 1979, 93 Stat. 82; Pub. L. 97-35, title IX, §913, Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, §305, Feb. 22, 1984, 98 Stat. 35, set forth grant authority for special projects grants, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6082, Pub. L. 88-164, title I, §162, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title V, §502, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §21, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103-230, title V, §503, Apr. 6, 1994, 108 Stat. 328; Pub. L. 105-12, §9(l)(4), Apr. 30, 1997, 111 Stat. 28, related to the Secretary's grant authority.

Section 6083, Pub. L. 88-164, title I, §163, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2684; amended Pub. L. 100-146, title V, §503, Oct. 29, 1987, 101 Stat. 858; Pub. L. 101-496, §22, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103-230, title V, §504, Apr. 6, 1994, 108 Stat. 331; Pub. L. 104-183, §5, Aug. 6, 1996, 110 Stat. 1695, authorized appropriations.

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

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§ 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(Pub. L. 94-135, title III, §302, Nov. 28, 1975, 89 Stat. 728; Pub. L. 95-478, title IV, §401(a), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 99-272, title XIV, §14001(b)(4), Apr. 7, 1986, 100 Stat. 329.)

AMENDMENTS

1986—Pub. L. 99-272 struck out “, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)” after “Federal financial assistance”.

1978—Pub. L. 95-478 struck out “unreasonable” before “discrimination”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272, title XIV, Apr. 7, 1986, 100 Stat. 329.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SHORT TITLE

Pub. L. 94-135, title III, §301, Nov. 28, 1975, 89 Stat. 728, provided that: “The provisions of this title [enacting

this chapter] may be cited as the 'Age Discrimination Act of 1975.'

§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, 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.

(Pub. L. 94-135, title III, §303, Nov. 28, 1975, 89 Stat. 728.)

§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final

general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption

(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected

(1) Nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

(Pub. L. 94-135, title III, §304, Nov. 28, 1975, 89 Stat. 729; Pub. L. 95-478, title IV, §401(b), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97-300, title I, §183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(37)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427.)

REFERENCES IN TEXT

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, referred to in subsec. (c)(2), is Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105-277 substituted "Nothing" for "Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, nothing".

1978—Subsec. (a)(4). Pub. L. 95-478, §401(b)(1), provided that the regulations shall not become effective until approved by the Secretary.

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§ 90.1

Subpart B—What is Age Discrimination?

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- 90.61 Review of general regulations.
- 90.62 Review of agency regulations.

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*

SOURCE: 44 FR 33776, June 12, 1979, unless otherwise noted.

45 CFR Subtitle A (10–1–16 Edition)

Subpart A—General

§ 90.1 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 or activities receiving Federal financial assistance. The Act also permits federally assisted programs or 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.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24321, May 9, 2005]

§ 90.2 What is the purpose of these regulations?

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each Federal agency which provides Federal financial assistance to any program or activity.

§ 90.3 What programs or activities does the Age Discrimination Act of 1975 cover?

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does 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.

(2) Any employment practice of any employer, employment agency, labor

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organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), (29 U.S.C. 801 *et seq.*).

§ 90.4 How are the terms in these regulations defined?

As used in these regulations, the term:

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

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 means how old a person is, or the number of elapsed years from the date of a person's birth.

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

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*).

Agency means a Federal department or agency that is empowered to extend financial assistance.

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:

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) 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.

Program or activity means all of the operations of—

- (a)(1) A department, agency, special purpose district, or other instrumen-

tality of a State or of a local government; or

(2) The entity of such State or local government that distributes Federal financial 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;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

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

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

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

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

(2) 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

(d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) of this definition; any part of which is extended Federal financial assistance.

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 financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

Secretary means the Secretary of the Department of Health and Human Services.

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

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territories and possessions of the United States.

(42 U.S.C. 6107)

[44 FR 33776, June 12, 1979, as amended at 70 FR 24321, May 9, 2005]

Subpart B—What is Age Discrimination?

STANDARDS FOR DETERMINING DISCRIMINATORY PRACTICES

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 90.14, and 90.15 of these regulations.

(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.

§ 90.13 Definitions of normal operation and statutory objective.

For purposes of §§ 90.14, and 90.15, the terms *normal operation* and *statutory objective* shall have the following meaning:

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

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 90.14 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 § 90.12, 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.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 90.12 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.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 90.14 and 90.15 is on the recipient of Federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?**§ 90.31 Issuance of regulations.**

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the FEDERAL REGISTER to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HHS for review no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not be published until the Secretary approves them.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursement procedure as described in § 90.48 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency.

§ 90.32 Review of agency policies and administrative practices.

(a) Each agency shall conduct a review of age distinctions it imposes on

its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each Federal agency and whether those age distinctions are permissible under the Act and implementing regulations.

(b) No later than 12 months from the date the agency published its final regulations, the agency shall publish, for public comment, a report in the FEDERAL REGISTER containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) The justification under the requirements of the Act and these regulations for each age distinction to be continued;

(4) A list of the age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of its age discrimination regulations, an agency may not continue an existing age distinction, unless the age distinction has already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 90.33 Interagency cooperation.

Where two or more agencies provide Federal financial assistance to a recipient or class of recipients, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to

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those recipients, except for the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs or activities receiving Federal financial assistance from the agency; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any programs or activities receiving Federal financial assistance from the agency and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in programs or activities receiving Federal financial assistance from the agency; and

(e) Contains whatever other data the Secretary may require.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24321, May 9, 2005]

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend Federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs or

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activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of the services of appropriate Federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

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

§ 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* Each agency shall: (1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(b) *Self-evaluation.* (1) Each agency shall require each recipient employing the equivalent of 15 or more full time employees to complete a written self-evaluation of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify each age distinction imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to

the agency and to the public for a period of 3 years following its completion.

(c) *Complaints*—(1) *Receipt of complaints*. Each agency shall establish a complaint processing procedure which includes the following:

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the coverage of the Act and contain all information necessary for further processing;

(iii) Notice to 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; and

(iv) Notice to the complainant and the recipient (or their representatives) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints*. Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints*. Each agency shall promptly refer all complaints which fall within the coverage of the Act to a mediation agency designated by the Secretary.

(i) The referring agency shall require the participation of the recipient and the complainant in the mediation process, although both parties need not meet with the mediator at the same time.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to the referring agency. No further action shall be taken based on that complaint unless it appears that the complainant or the recipient is failing to comply with the agreement.

(iii) Not more than 60 days after the agency receives the complaint, the mediator shall return a still unresolved complaint to the referring agency for initial investigation. The mediator may return a complaint at any time

before the end of the 60 day period if it appears that the complaint cannot be resolved through mediation.

(iv) 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.

(4) *Federal initial investigation*. Each agency shall investigate complaints unresolved after mediation or reopened because of a violation of the mediation agreement. As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and the recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State agency.

(5) *Formal investigation, conciliation, and hearing*. If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in § 90.47, if necessary.

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

§ 90.44 Compliance reviews.

(a) Each agency shall provide in its regulations that it may conduct compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in § 90.47.

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§ 90.45 Information requirements.

Each agency shall provide in its regulations a requirement that the recipient:

- (a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act; and
- (b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

§ 90.46 Prohibition against intimidation or retaliation.

Each agency shall provide in its regulations that recipients may not engage in acts of intimidation or retaliation against any person who:

- (a) Attempts to assert a right protected by the Act; or
- (b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's 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 the agency's regulations.

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

(b) Any termination under paragraph (a)(1) shall be limited to the particular recipient and particular program or ac-

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tivity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a 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 disbursement 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 discriminated, 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 notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought 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.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 Review of general regulations.

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and

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publish the results of the review and assessment in the FEDERAL REGISTER.

§ 90.62 Review of agency regulations.

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the FEDERAL REGISTER.

PART 91—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM HHS

Subpart A—General

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- 91.2 What is the purpose of HHS' age discrimination regulations?
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- 91.15 Burden of proof.
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Subpart D—Investigation, Conciliation, and Enforcement Procedures

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- 91.48 Remedial action by recipient.
- 91.49 Alternate funds disbursement procedure.
- 91.50 Exhaustion of administrative remedies.

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

SOURCE: 47 FR 57858, Dec. 28, 1982, unless otherwise noted.

Subpart A—General

§ 91.1 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 or activities receiving Federal financial assistance. The Act also permits federally assisted programs or 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.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

§ 91.2 What is the purpose of HHS' age discrimination regulations?

The purpose of these regulations is to set out HHS' policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR part 90.¹ 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 or activities,

¹Published at 44 FR 33768, June 12, 1979.