

## § 1040.87

(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.

### **§ 1040.87 Exceptions to the rules against age discrimination. Reasonable factors other than age.**

A recipient is permitted to take an action otherwise prohibited by §1040.84 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.

### **§ 1040.88 Remedial and affirmative action by recipients.**

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take such remedial action as the Director, Office of Equal Opportunity (OEO), considers necessary to overcome the effects of the discrimination.

(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 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.

### **§ 1040.89 Burden of proof.**

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§1040.86 and 1040.87 is on the recipient of Federal financial assistance.

## 10 CFR Ch. X (1-1-03 Edition)

### RESPONSIBILITIES OF DOE RECIPIENTS

#### **§ 1040.89-1 General responsibilities.**

Each DOE recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations. A recipient also has responsibility to maintain records, provide information, and afford access to its records to DOE, to the extent required to determine whether it is in compliance with the Act and these regulations.

#### **§ 1040.89-2 Notice to subrecipients.**

Where a recipient awards Federal financial assistance from DOE to its subrecipients, the recipient shall provide the subrecipients written notice of their obligations under these regulations.

#### **§ 1040.89-3 Information requirements.**

Each recipient shall: (a) Upon request make available to DOE information necessary to determine whether the recipient is complying with the Act and these regulations.

(b) Permit reasonable access by DOE, upon request, to the books, records, accounts, and other recipient facilities and 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

#### **§ 1040.89-4 Compliance reviews.**

(a) DOE may conduct preaward and postaward compliance reviews of recipients as prescribed in this part or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOE may conduct these reviews even in the 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 indicates a violation of the Act or these regulations, DOE will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved,