§ 35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by §35.10, if that action is based on a factor other than age, even though the action may have a disproportionate effect on persons of different ages. An action is 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.

§ 35.14 Burden of proof.

The recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in §§35.12 and 35.13.

§ 35.15 Remedial action.

Even in the absence of a finding of discrimination, a recipient, in administering a program, may take steps to overcome the effects of conditions that resulted in a limited participation on the basis of age. Nothing in this section will permit any otherwise prohibited use of age distinctions that have the effect of excluding individuals from, denying them benefits of, subjecting them to discrimination under, or limiting them in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

§ 35.16 Special benefits for children and the elderly.

If a recipient is operating a program or activity that provides special benefits to the elderly or to children, the use of such age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of §35.12.

§ 35.17 Age distinctions in DOL regulations.

Any age distinction in regulations issued by DOL is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of §35.12.