

Federal Property Management Regulations

§ 101-8.710

activity receiving Federal financial assistance from GSA.

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

(1) Excluding individuals from participating in, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individual opportunity to participate in any program or activity receiving Federal financial assistance.

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

§ 101-8.705 Definition of normal operation and statutory objective.

The terms *normal operation* and *statutory objective* are defined as follows:

(a) *Normal operation* means the operation of a program or activity without significant changes that would inhibit meeting objectives.

(b) *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.

§ 101-8.706 Exceptions to the rules against age discrimination.

§ 101-8.706-1 Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic must be measured or approximated 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 can be reasonably measured or approximated by the use of age; and

(d) The other characteristic is impractical to measure directly on an individual basis.

§ 101-8.706-2 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by § 101-8.706-1, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 101-8.707 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 101-8.706 is the recipient's.

§ 101-8.708 Affirmative action by recipient.

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient's program or activity.

§ 101-8.709 Special benefits for children and the elderly.

If a recipient's program or activity provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 101-8.705.

§ 101-8.710 Age distinctions contained in General Services Administration regulation.

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies. The GSA regulation 41 CFR 101-44.207(a) (3) through (27), describes specific Federal

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financial assistance which provides assistance to all age groups. However, the Child Care Center Program servicing children through age 14, and “Programs for Older Individuals”, are the only two types of Federal financial assistance where age distinctions are provided.

§ 101-8.711 General responsibilities.

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs or activities comply with the Act and this regulation and must take steps to eliminate violations of the Act. A recipient is also responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this regulation.

§ 101-8.712 Notice to subrecipients and beneficiaries.

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this regulation.

(b) Each recipient makes necessary information about the Act and this regulation available to its beneficiaries to inform them about the protections against discrimination provided by the Act and this regulation.

§ 101-8.713 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from GSA signs a written assurance as specified by GSA that it intends to comply with the Act and this regulation.

(b) Recipient assessment of age distinctions.

(1) As part of a compliance review under §101-8.715 or complaint investigation under §101.8.718, GSA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from GSA to assess the recipient’s compliance with the Act.

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(2) If an assessment indicates a violation of the Act and the GSA regulation, the recipient takes corrective action.

§ 101-8.714 Information requirements.

Each recipient must:

(a) Keep records in a form and containing information that GSA determines necessary to ensure that the recipient is complying with the Act and this regulation.

(b) Provide to GSA upon request, information and reports that GSA determines necessary to find out whether the recipient is complying with the Act and this regulation.

(c) Permit reasonable access by GSA to books, records, accounts, facilities, and other sources of information to the extent GSA finds it necessary to find out whether the recipient is complying with the Act and this regulation. GSA adopts HHS policy regarding the kinds of data and information recipients are expected to keep (45 CFR 90.34). This policy is parallel to compliance information sections in the title VI, title IX, and section 504 implementation regulations. While recognizing the need for enough data to assess recipient compliance, GSA is committed to lessening the data gathering burden on recipients. GSA further recognizes that there is no established body of knowledge or experience to guide the assessment of age discrimination. This regulation, therefore, does not impose specific data requirements upon recipients, rather, it allows GSA to be flexible in deciding what kinds of data should be kept by recipients, based on what kinds of data prove useful as GSA gains experience with the Age Discrimination Act, and age discrimination issues become clearer.

(d) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 59-511), the reporting and record keeping provisions included in this regulation will be submitted, for approval, to the Office of Management and Budget (OMB). No data collection or record keeping requirement will be imposed on recipients or donees without the required OMB approval number.