

National Foundation on the Arts and the Humanities

§ 1156.8

(o) *United States* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Federated States of Micronesia and the Republic of Palau, the Northern Marianas, and the territories and possessions of the United States.

[63 FR 6876, Feb. 11, 1998, as amended at 68 FR 51385, Aug. 26, 2003]

§ 1156.4 [Reserved]

Subpart B—Standards for Determining Discriminatory Practices

§ 1156.5 Purpose.

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

§ 1156.6 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1156.7 (b) and (c).

(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 of discriminatory actions.

§ 1156.7 Exceptions to the rules against age discrimination.

(a) *Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 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, 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.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 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.

(c) *Remedial and affirmative action by recipients.* 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.

[63 FR 6876, Feb. 11, 1998, as amended at 68 FR 51385, Aug. 26, 2003]

§ 1156.8 Burden of proof.

The recipient of Federal financial assistance bears the burden of proving that an age distinction or other action