

objective of a program or activity. An action meets this standard 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 or 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 bases.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by §20.4 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.

§ 20.6 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §20.5 is on the recipient of Federal financial assistance.

Subpart C—Responsibilities of DOC Recipients

§ 20.7 General responsibilities.

Each DOC recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act, the general regulations, and these regulations, and shall take steps to eliminate violation of the Act.

(a) Each DOC recipient will provide an assurance that the program or activity for which it is receiving Federal financial assistance will be conducted in compliance with all requirements for the Act and these and other DOC regulations. A recipient also has responsibility to maintain records, provide information, and to afford DOC reasonable access to its records and facilities to the extent necessary to de-

termine whether it is in compliance with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) To assess the recipient's compliance with the Act, DOC may, as part of a compliance review under §20.10 or a complaint investigation under §20.11, require a recipient employing the equivalent or 15 or more employees, to complete, in a manner specified by the responsible Department official, a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from DOC.

(2) Whenever an assessment indicates a violation of the Act and the DOC regulations, the recipient shall take corrective action.

§ 20.8 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from DOC to subrecipients, the recipient shall give subrecipients written notice of their obligations under the Act and these regulations.

§ 20.9 Information requirements.

Upon DOC's request, each recipient shall provide access and make information available for DOC to determine whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 20.10 Compliance reviews.

(a) DOC may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOC may conduct such review even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review of pre-award review indicates a violation of the Act or these regulations, DOC will

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attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOC will arrange for enforcement as described in § 20.15.

§ 20.11 Complaints.

(a) Any person, individually, or as a member of a class, or on behalf of others, may file a complaint with DOC alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, DOC may extend this time limit.

(b) DOC will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which: identifies the parties involved and the date the complainant first had knowledge of the alleged violation; describes generally the action or practice complained of; and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint;

(3) Considering as the filing date, the date on which a complaint is sufficient to be processed;

(4) Notifying 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 process;

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact DOC for information and assistance regarding the complaint resolution process.

(c) DOC will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 20.12 Mediation.

(a) DOC will refer to a mediation service designated by the Secretary all sufficient complaints that:

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(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exception; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to DOC. DOC will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator is required to 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 or the mediation service.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with DOC. Mediation ends if:

(1) 60 days elapse from the time DOC receives the complaint; *or*

(2) Prior to the end of that 60-day period, an agreement is reached; *or*

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(f) The mediator shall return unresolved complaints to DOC.

§ 20.13 Investigation.

(a) Informal investigation:

(1) DOC will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOC will use informal factfinding methods, including joint or separate discussions with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms