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TITLE 24--HOUSING AND URBAN
DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY
FOR EQUAL OPPORTUNITY,
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

PART 146--NONDISCRIMINATION ON THE
BASIS OF AGE IN HUD PROGRAMS OR
ACTIVITIES RECEIVING FEDERAL FINANCIAL
ASSISTANCE--Table of Contents

Subpart A--General

Sec. 146.1 Purpose of the Age Discrimination
Act of 1975.

The Age Discrimination Act of 1975 (the Act) prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act, however, permits federally assisted programs and activities and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

Sec. 146.3 Purpose of HUD's age discrimination
regulation.

The purpose of this part is to state HUD's policies and procedures under the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR part 90.

Sec. 146.5 Applicability of part.

This part applies to each program or activity that receives Federal financial assistance provided by HUD.

Sec. 146.7 Definitions.

The terms HUD and Secretary are defined in 24 CFR part 5.

Act means the Age Discrimination Act of 1975, 42 U.S.C. 6101-07.

Action means any act, activity, policy, rule, standard, or method of administration or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of elapsed years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, *children, adult, older persons*, but not *student*).

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which HUD provides or otherwise makes available assistance in the form of:

- (a) Funds;
- (b) Service of Federal personnel; or
- (c) Real or personal property or any interest in or use of property, including:
 - (1) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

Recipient means any State or its political subdivisions; any instrumentality of a State or its political subdivisions; any public or private agency; any Indian tribe or Alaskan Native Village, institution, organization, or other entity; or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

Subrecipient means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance. A subrecipient is regarded as a recipient of Federal financial assistance and has all the duties of a recipient set out in this part.

United States means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

[51 FR 45266, Dec. 17, 1986, as amended at 61 FR 5206, Feb. 9, 1996]

Subpart B--Standards for Determining Age Discrimination

Sec. 146.11 Scope of **subpart**.

This **subpart** contains the standards that HUD will use to determine whether an age distinction, or a factor other than age that may have a disproportionate effect on persons of different ages, is prohibited.

Sec. 146.13 Rules against age discrimination.

(a) The rules stated in this paragraph are limited by the exceptions contained in paragraphs (b) and (c) of this section.

(1) 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.

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

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

(ii) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (a)(2) of this section do not necessarily constitute a complete list.

(b) Exceptions for normal operation or statutory objective of any program or activity. A recipient is permitted to take an action

otherwise prohibited by paragraph (a) of this section 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. An 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 characteristics 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 characteristics can be reasonably measured or approximated by the use of age; and

(4) The other characteristics are impractical to measure directly on an individual basis.

(c) Exceptions for reasonable factors other than age. A recipient is permitted to take action otherwise prohibited by paragraph (a) of this section if the action 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 the achievement of a statutory objective.

(d) Burden of proof. The burden of proving that an age distinction or other action falls within an exception described in paragraph (b) or (c) of this section is on the recipient of Federal financial assistance.

(e) For the purposes of paragraphs (b) and (c), normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its statutory objectives. Statutory objectives means any purpose of a program or activity expressly stated in any Federal, State, or local statute adopted by an elected, general purpose legislative body.

(f) Notwithstanding paragraph (b) of this section, if a recipient operating a program provides special benefits to the elderly or to

children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program.

Subpart C--Duties of HUD Recipients

Sec. 146.21 General responsibilities.

Each recipient has primary responsibility to ensure that its programs and activities that receive Federal financial assistance from HUD comply with the provisions of the Act, the government-wide regulation, and this part, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HUD access to its records to the extent HUD finds necessary to determine whether a program or activity receiving Federal financial assistance from HUD is in compliance with the Act and this part.

(Approved by the Office of Management and Budget under control number 2529-0030)

[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

Sec. 146.23 Notice of subrecipients.

Whenever a recipient passes Federal financial assistance from HUD to subrecipients, the recipient shall provide the subrecipient with written notice of its obligations under this part and the recipient will remain responsible for the subrecipient's compliance with respect to programs and activities receiving Federal financial assistance from HUD.

Sec. 146.25 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HUD shall sign a written assurance as specified by HUD that it will comply with the Act and this part with respect to programs and activities receiving Federal financial assistance from HUD.

(b) As part of a compliance review under Sec. 146.31 or an investigation under Sec. 146.37, HUD may require a recipient employing

the equivalent of 15 or more employees to complete, in a manner specified by the Secretary or Secretary's designee, a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from HUD, so that HUD may have to assess the recipient's compliance with the Act. Whenever an assessment indicates a violation of the Act or this part, the recipient shall take corrective action to remedy the violation.

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[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

Sec. 146.27 Information requirements.

In order to make it possible for HUD to determine whether recipients are in compliance with the Act and this part, each recipient shall:

(a) Keep records in a form and containing information that HUD determines is necessary;

(b) Make information available to HUD upon request;

(c) Permit reasonable access by HUD to the books, records, accounts and other recipient facilities and sources of information.

(Approved by the Office of Management and Budget under control number 2529-0030)

[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

Subpart D--Investigation, Settlement, and Enforcement Procedures

Sec. 146.31 Compliance reviews.

(a) HUD may conduct pre-award reviews to determine whether programs or activities submitted for HUD assistance are consistent with the age distinctions set forth at Sec. 146.13(b).

(b) If a pre-award review indicates that the proposed programs or activities are not consistent with the age distinctions set forth at Sec. 146.13(b), the application will be returned to the applicant for additional information or

clarification or for correction consistent with this part.

(c) HUD may conduct compliance reviews of recipients that will enable it to investigate and correct violations of this part. HUD may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary for HUD to determine whether a violation has occurred.

(d) If a compliance review indicates a violation, HUD will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, HUD may begin enforcement procedures as provided in Sec. 146.39.

Sec. 146.33 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HUD alleging discrimination prohibited by the Act. 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, HUD may extend this time limit. The filing date for a complaint will be the date upon which the complaint is deemed sufficient to be processed.

(b) HUD shall facilitate the filing of complaints and shall take the following measures:

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

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

(3) Widely disseminate information regarding the obligations of recipients under the Act and this part;

(4) Notify the complainant and the recipient of their rights under the complaint process, including the right to have a representative at all stages of the complaint process; and

(5) Notify the complainant and the recipient of their right to contact HUD for information and assistance regarding the complaint resolution process.

(c) HUD will return to the complainant any complaint determined to be outside the

coverage of this part, and shall state the reasons why it is outside the coverage.

(Approved by the Office of Management and Budget under control number 2529-0030)

[51 FR 45266, Dec. 17, 1986, as amended at 52 FR 7408, Mar. 11, 1987]

Sec. 146.35 Mediation.

(a) HUD shall refer to the Federal Mediation and Conciliation Service, a mediation agency designated by the Secretary of Health and Human Services, all complaints that:

(1) Fall within the coverage of this part, unless the age distinction complained of is clearly with 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 make an informal judgment that an agreement is not possible. There should be at least one meeting by each party with the mediator during the mediation process. However, the recipient and the complainant need not meet with the mediator at the same time.

(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 recipient sign it. The mediator shall send a copy of the agreement to HUD. HUD will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of 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 the prior approval of the head of the mediation agency.

(e) HUD shall use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

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

(2) Before the end of the 60-day period, an agreement is reached; or

(3) Before the end of the 60-day period, the mediator determines that an agreement cannot be reached. This 60-day period may be extended by the mediator, with the concurrence of HUD, for not more than an additional 30 days if the mediator determines that it is likely that an agreement will be reached during such extended period.

Sec. 146.37 Investigation.

(a) Investigation and settlement following mediation. (1) HUD shall investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement.

(2) In the investigation of complaints filed under this part, HUD will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. HUD may also seek the assistance of any applicable State agency. Where possible, HUD will settle the complaint on terms that are mutually agreeable to the parties.

(3) Settlements shall be in writing and signed by the parties and by an authorized HUD official.

(4) A settlement shall not affect the initiation or continuation of any other enforcement effort of HUD, including compliance reviews or investigation of other complaints involving the recipient.

(5) A settlement reached under this paragraph (a) of this section is an agreement to resolve an alleged violation of the Act to the satisfaction of the parties involved, and does not constitute a finding of discrimination against the recipient.

(b) Failure of settlement. If HUD cannot resolve the complaint through settlement, it may make a formal determination that the Act or this part has been violated and begin enforcement procedures, as provided in Sec. 146.39. HUD shall inform the recipient and complainant in writing that the matter cannot be resolved through settlement.

Sec. 146.39 Enforcement procedures.

(a) HUD may enforce the Act this regulation by:

(1) Termination of a recipient's financial assistance from HUD under the program or

activity involved, if the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an Administrative Law Judge. If the financial assistance consists of a Community Development Block Grant, the requirements of section 109(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5309, must also be satisfied before the termination of financial assistance. Cases settled in mediation or before hearing will not involve termination of a recipient's Federal financial assistance from HUD.

(2) Any other means authorized by law, including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this part;

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301-5317, has failed to comply with requirements of the Age Discrimination Act or this part with respect to a program or activity funded in whole or in part with such assistance, he or she shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to take the action specified in (a) of this section, exercise the powers and functions provided for in section 111(a) of the Housing and Community Act of 1974, 42 U.S.C. 5311(a), or take such other action as may be provided by law.

(c) HUD shall limit any termination under Sec. 146.35 to the particular recipient and particular program or activity HUD finds to be in violation of this part. HUD shall not base any part of a termination on a finding with respect to any

program or activity of the recipient which does not receive Federal financial assistance from HUD.

(d) HUD shall take no action under paragraph (a) of this section until:

(1) The Secretary has advised the recipient of its failure to comply with the Act or this part and has determined that voluntary compliance cannot be achieved.

(2) Thirty days have have elapsed after the Secretary has submitted a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(e)(1) The Secretary may defer the provision of new Federal financial assistance to a recipient when termination proceedings under this section are initiated.

(2) New financial assistance from HUD includes all assistance for which HUD requires an application, approval, or submissions under the Community Development Block Grant program including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New financial assistance from HUD does not include increases in funding as a result of changed computation for formula awards or assistance approved before the beginning of a hearing under this section.

(3) HUD shall not impose a deferral until the recipient has received a notice of an opportunity for a hearing under this section. HUD shall not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HUD shall not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding that the recipient has violated that Act or this part.

Sec. 146.41 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation

against any person who:

(a) Attempts to assert a right protected by this part; or

(b) Cooperates in any mediation, investigation, hearing, or other part of HUD's investigation, settlement, and enforcement process.

Sec. 146.43 Hearings, decisions, post-termination proceedings.

The provisions of 24 CFR part 180 apply to HUD enforcement of this part. [61 FR 52218, Oct. 4, 1996]

Sec. 146.45 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HUD had made no finding with regard to the complaint; or

(2) HUD issues any finding in favor of the recipient.

(b) If HUD fails to make a finding within 180 days or issues a finding in favor of the recipient, HUD shall:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary of HUD, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Sec. 146.47 Remedial and affirmative action by recipients.

(a) Where the Secretary finds that a recipient has unlawfully discriminated on the basis of age, the recipient shall take any action that the Secretary may require to overcome the effects of the discrimination. If another recipient exercises control over a subrecipient that has unlawfully discriminated, the Secretary may require both recipients to take remedial action.

(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 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.

Sec. 146.49 Alternate funds disbursement procedure.

(a) Except as otherwise provided in this paragraph and to the extent authorized by law, the Secretary may reimburse funds withheld or terminated under this part directly to an alternate recipient, including any public or non-profit private organization or agency, State or political subdivision of the State. Under title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301, funds withheld because of a reduction or withdrawal of a recipient's Community Development Block Grant must be reallocated in the succeeding fiscal

year, in accordance with the applicable regulations governing that program.

(b) The Secretary shall require the alternate recipient to demonstrate:

(1) The ability to comply with the regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.