

§7.920

agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

- (a) Funds; or
- (b) Services or Federal personnel; or
- (c) Real and 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.

Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objective.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, 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 excludes the ultimate beneficiary of the assistance.

Statutory objective means any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body.

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 generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

United States includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands and all other territories and possessions of the United States. The term "State" also includes any one of the foregoing.

44 CFR Ch. I (10–1–99 Edition)

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§7.920 Rules against discrimination.

The rules stated in this section are limited by the exceptions contained in §§7.921 and 7.922 of these regulations.

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

§7.921 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by §7.920, if the action reasonably takes into account age as a factor necessary to the normal operation of 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:

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

(b) 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

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

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

§ 7.922 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 7.920 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages 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.

§ 7.923 Burden of proof for exceptions.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.921 and 7.922 is on the recipient of Federal financial assistance.

§ 7.924 Affirmative action by recipient.

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

§ 7.925 Special benefits for children and the elderly.

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, notwithstanding the provisions of § 7.921.

§ 7.926 Age distinctions contained in FEMA regulations.

Any age distinctions contained in a rule or regulation issued by FEMA shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 7.921.

DUTIES OF FEMA RECIPIENTS

§ 7.930 General responsibilities.

Each FEMA recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and this regulation, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford FEMA access to its records to the extent FEMA finds necessary to determine whether the recipient is in compliance with the Act and this regulation.

§ 7.931 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from FEMA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and this regulation.

(b) Each recipient shall make necessary information about the Act and this regulation available to its program beneficiaries in order to inform them about the protection against discrimination provided by the Act and this regulation.

§ 7.932 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from FEMA shall sign a written assurance as specified by FEMA that it will comply with Act and this regulation.

(b) Recipient assessment of age distinctions. (1) As part of the compliance review under § 7.940 or complaint investigation under § 7.943, FEMA may require a recipient employing the equivalent of fifteen or more employees to complete written evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from FEMA to assess the recipient's compliance with the Act.

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