

## § 110.11

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

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

(Authority: 42 U.S.C. 6101-6103)

### § 110.11 Definitions of “normal operation” and “statutory objective.”

For purposes of these regulations, the terms *normal operation* and *statutory objective* have the following meanings:

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

(b) *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.

(Authority: 42 U.S.C. 6103)

### § 110.12 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 § 110.10 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—

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

(b) The other characteristic or 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;

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

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

(Authority: 42 U.S.C. 6103)

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

A recipient is permitted to take an action otherwise prohibited by § 110.10 that 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.

(Authority: 42 U.S.C. 6103)

### § 110.14 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 110.12 and 110.13 is on the recipient of Federal financial assistance.

(Authority: 42 U.S.C. 6104)

### § 110.15 Affirmative action by recipients.

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.

(Authority: 42 U.S.C. 6103)

### § 110.16 Special benefits for children and the elderly.

If a recipient operating a program or activity provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 110.12.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

### § 110.17 Age distinctions contained in ED's regulations.

Any age distinction contained in regulations issued by ED is presumed to be necessary to the achievement of a