

## Department of Veterans Affairs

## § 18.515

Zone, the Trust Territories of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(Authority: 42 U.S.C. 6101-6107)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51371, Aug. 26, 2003]

### STANDARDS FOR DETERMINING AGE DISCRIMINATION

#### § 18.511 Rules against age discrimination.

The rules in this section are limited by the exceptions contained in §§ 18.513 and 18.514 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, 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.

(Authority: 42 U.S.C. 6101-6107)

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

For the purpose of these regulations, the terms *normal operation* and *statutory objective* shall have the following meaning:

(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. 6101-6107)

#### § 18.513 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 § 18.511, 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; 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.

(Authority: 42 U.S.C. 6101-6107)

#### § 18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 18.511 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.

(Authority: 42 U.S.C. 6101-6107)

#### § 18.515 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 18.513 and

**§ 18.516**

18.514 is on the recipient of Federal financial assistance.

(Authority: 42 U.S.C. 6101-6107)

**§ 18.516 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. 6101-6107)

RESPONSIBILITIES OF DEPARTMENT OF VETERANS AFFAIRS RECIPIENTS

**§ 18.531 General responsibilities.**

Each VA recipient must ensure that its programs or activities are in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6101-6107)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51372, Aug. 26, 2003]

**§ 18.532 Notice of subrecipients.**

Where a recipient passes on Federal financial assistance from VA to programs or activities of subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations with respect to such programs and activities.

(Approved by the Office of Management and Budget under control number 2900-0400)

(Authority: 42 U.S.C. 6101-6107)

[50 FR 34133, Aug. 23, 1985, as amended at 68 FR 51372, Aug. 26, 2003]

**§ 18.533 Assurance of compliance and recipient assessment of age distinctions.**

(a) Each recipient of Federal financial assistance from VA shall sign a written assurance as specified by the Secretary that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under §18.541 or complaint investigation under §18.544, the Secretary may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible

**38 CFR Ch. I (7-1-08 Edition)**

agency official, of any age distinction imposed in its programs or activities receiving Federal financial assistance from VA to assess the recipient's compliance with the Act.

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

(Authority: 42 U.S.C. 6101-6107)

**§ 18.534 Information requirements.**

Each recipient shall:

(a) Make available upon request to VA information necessary to determine whether the recipient is complying with the Act and these regulations.

(b) Permit reasonable access by VA to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6101-6107)

INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES

**§ 18.541 Compliance reviews.**

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

(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, VA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, VA may institute enforcement proceedings as described in §18.546.

(Authority: 42 U.S.C. 6101-6107)

**§ 18.542 Complaints.**

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with VA alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1,