§ 101–8.706 Exceptions to the rules against age discrimination.

§ 101–8.706–1 Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

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

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

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

§ 101–8.706–2 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by § 101–8.706–1, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 101–8.707 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 101–8.706 is the recipient's.

§ 101–8.708 Affirmative action by recipient.

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

§ 101–8.709 Special benefits for children and the elderly.

If a recipient's program provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 101–8.705.

§ 101–8.710 Age distinctions contained in General Services Administration regulation.

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies. The GSA regulation 41 CFR 101–44.207(a) (3) through (27), describes specific Federal financial assistance programs which provide assistance to all age groups. However, the ''Child Care Center'' program servicing children through age 14, and ''Programs for Older Individuals'', are the only two programs where age distinctions are provided.

§ 101–8.711 General responsibilities.

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs and activities comply with the Act and this regulation and must take steps to eliminate violations of the Act. A recipient is also responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this regulation.

§ 101–8.712 Notice to subrecipients and beneficiaries.

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this regulation.

(b) Each recipient makes necessary information about the Act and this regulation available to its program beneficiaries to inform them about the protections against discrimination provided by the Act and this regulation.