

§ 1156.7 Exceptions to the rules against age discrimination.

(a) *Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 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, if:

- (1) Age is used as a measure or approximation of one or more other characteristics; and
- (2) 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
- (3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
- (4) The other characteristic(s) are impractical to measure directly on an individual basis.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 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.

(c) *Remedial and affirmative action by recipients.* If a recipient operating a program or activity which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to 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 or activity.

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