

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 35**

RIN 1291-AA21

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the Department of Labor**AGENCY:** Office of the Secretary, Labor.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking sets out the Department of Labor's ("DOL" or "the Department") proposed rules for implementing the Age Discrimination Act of 1975, as amended ("Age Act"). The Age Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that might have a disproportionate effect on the basis of age. The Age Act applies to persons of all ages.

DATES: Comments must be received by September 9, 2003.

ADDRESSES: Address all comments about this proposed rule to Annabelle T. Lockhart, Director, Civil Rights Center ("CRC"), Frances Perkins Building, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Brief comments (maximum five pages) may be submitted by facsimile machine (FAX) to 202/693-6505. Comments by electronic mail may be sent to CivilRightsCenter@dol.gov. Receipt of submissions, whether by mail, FAX transmittal or by e-mail, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at (202) 693-6500 (VOICE) or (202) 693-6515, (800) 326-2577 (TTY/TDD).

Comments that CRC receives will be available for public inspection at DOL during normal business hours. Appropriate aids are available on request to persons needing assistance to review the comments. In addition, copies of this proposed rule are available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternate format, contact CRC at the telephone number or address listed above.

FOR FURTHER INFORMATION CONTACT: Annabelle T. Lockhart, Director, Civil

Rights Center (CRC), Frances Perkins Building, 200 Constitution Ave. NW., Room N-4123, Washington, DC 20210, CivilRightsCenter@dol.gov, (202) 693-6500 (VOICE) or (202) 693-6515, (800) 326-2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION:**I. Background Information**

The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act applies to discrimination at all age levels. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements.

The Age Act required the former Department of Health, Education, and Welfare (HEW) to issue general, government-wide regulations setting standards to be followed by all Federal agencies implementing the Age Act. These government-wide regulations, which were issued on June 12, 1979 (45 CFR part 90; 44 FR 33768), and became effective on July 1, 1979, require each Federal agency providing financial assistance to any program or activity to publish final regulations implementing the Age Act, and to submit final agency regulations to HEW (now the Department of Health and Human Services (HHS)), before publication in the **Federal Register**. (See 45 CFR 90.31.)

II. Rulemaking History

On December 29, 1998, DOL published its first NPRM to implement the Age Act. See 63 FR 71714 (1998). No comments were received by DOL regarding the proposal. A second NPRM (NPRM II) was published on June 10, 2002, to address changes in statutory and case law that occurred subsequent to publication of the first NPRM. See 67 FR 39830 (2002). No comments were received by DOL regarding the second proposal.

As part of the clearance process required by the government-wide Age Act regulations, DOL submitted its draft final rule to the Department of Health and Human Services (HHS) for review prior to publication as required by 45 CFR 90.31(c). HHS raised concerns about consistency between the draft DOL final Age Act rule and the government-wide Age Act regulations, as well as a few additional minor matters. The purpose of this NPRM is to address the HHS concerns and to propose minor technical corrections to the rule. These changes are discussed

below in the section-by-section review of the proposed rule.

III. Section-by-Section Review of the NPRM

The NPRM published today is identical to NPRM II with five exceptions. The proposed language in sections 35.2(b), 35.3, 35.13, 35.15 and 35.37 is different from the language proposed for these sections in NPRM II. The differences between today's proposal and NPRM II are discussed below. Individuals interested in information about those sections of the proposed rule not discussed below are referred to the December 29, 1998, NPRM (63 FR 71714) and the June 10, 2002, NPRM II (67 FR 39830) for additional information.

Section 35.2(b)

NPRM II proposed that Section 35.2(b) state that "[c]ompliance with Section 188 of the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 2938) and implementing regulations at 29 CFR part 37, will satisfy the obligations of recipients of Federal financial assistance from DOL under WIA to comply with this part. CRC will use the legal standards in Subpart B of this part when evaluating whether a WIA recipient has engaged in unlawful age discrimination." Today the Department is proposing not to include this language in the rule.

Compliance with the implementing regulations for section 188 of WIA will not satisfy recipient obligations under the Age Act. The definition of "WIA Title I-funded program or activity" found in the WIA regulations is not consistent with the definition of "program or activity" found in the Age Act, which was amended by the Civil Rights Restoration Act of 1987 (CRRRA). The effect of the CRRRA on the Age Act was to define "program or activity" to encompass all parts of the recipient's operations; *i.e.*, the scope of coverage is institution-wide. The regulation implementing section 188 of WIA does not contain as broad a scope of coverage. The scope of coverage of WIA is limited to the specific program or activity that receives financial assistance and not the entire institution. Additionally, the regulation implementing section 188 of WIA does not contain the exemptions to the rules against age discrimination that are part of the government-wide rule at 45 CFR 91.13 and 91.14. Accordingly, to make the Department's Age Act rule correspond to the government-wide Age Act rule, the Department proposes to delete section 35.2(b) and renumber this section.