



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Age Discrimination Act of 1975

Law/Act:	Age Discrimination Act of 1975	
U.S. Code Citation:	42 U.S.C. §§ 6101–6107	
Code of Federal Regulations Citation:	34 C.F.R. pt. 110 ; 45 C.F.R. pt. 90	
Responsible Regulator:	U.S. Department of Education, Office for Civil Rights; U.S. Department of Health & Human Services ¹	
BYU–Hawaii Responsible Officer:	VP of Administration; VP for Student Development and Services; VP for Academics; VP of Operations	
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Version 1.0		Effective Date: 1976

I. PURPOSE

The purpose of the Age Discrimination Act of 1975 is to prohibit discrimination on the basis of age in any programs or activities receiving federal financial assistance.² The Act was created with particular goals to protect the rights of older American citizens.³

II. HISTORY

Congress enacted the Age Discrimination Act in November 1975 as an amendment to the Older Americans Act.⁴ Although earlier laws passed during the 1960s sought to protect disadvantaged older citizens in the *workplace*,⁵ the Age Discrimination Act extended protections to *federally funded programs or activities*.⁶ Following passage of the Act, and as required, the U.S. Department of Health, Education, and Welfare (predecessor agency to the current Department of Education and the Department of Health and Human Services) issued general regulations in 1979.⁷ Since then, many different federal agencies—including the Department of Labor, National Science Foundation, and Nuclear Regulatory Commission—have published their own agency-specific rules for implementing the law.⁸ This memo will primarily focus on the standards issued by the U.S. Department of Education (ED).⁹

¹ Other federal agencies have regulatory oversight for those entities to whom they distribute funds. For example, the Civil Rights Center of the Department of Labor (DOL), regulates those entities receiving funds from DOL. 29 C.F.R. pt. 35 (2017).

² 42 U.S.C. § 6101 (2017).

³ Age Discrimination Act of 1975, Pub. L. No. 94-135, § 301, 89 Stat. 713.

⁴ *Id.*

⁵ See e.g., Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602.

⁶ Age Discrimination Act of 1975, Pub. L. No. 94-135, § 301, 89 Stat. 713.

⁷ 42 U.S.C. § 6103(a); Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 44 Fed. Reg. 33,768 (June 12, 1979) (codified at 45 C.F.R. pt. 90).

⁸ See e.g., Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS, 47 Fed. Reg. 57,850 (Dec. 28, 1982) (codified at 45 C.F.R. pt. 91); Nondiscrimination on the Basis of Age in Program or Activities Receiving Federal Financial Assistance from NSF, 49 Fed. Reg. 49,627 (Dec. 21, 1984) (codified at 45 C.F.R. pt. 617); Nondiscrimination on Basis of Age in Federally Assisted Commission Programs 52 Fed. Reg. 25,355 (July 7, 1987) (codified at 10 C.F.R. pt. 4, subpt. C); Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 58 Fed. Reg. 40,194 (July 27, 1993) (codified at 34 C.F.R. pt. 110); Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor, 69 Fed. Reg. 17,570 (Apr. 2, 2004) (codified at 29 C.F.R. pt. 35).

⁹ See generally 34 C.F.R. pt. 110.



III. APPLICABILITY TO BYU–HAWAII

The Age Discrimination Act applies to “any program or activity receiving Federal financial assistance.”¹⁰ Under the law, the term “program or activity” refers to “all the operations of . . . a college, university, or other postsecondary institution[.]”¹¹ Federal financial assistance may include grants, entitlements, loans, cooperative agreements, contracts, or any other arrangement that otherwise provides assistance.¹² Notably, the Age Discrimination Act does not cover employment discrimination, which is governed by the Age Discrimination in Employment Act.¹³ Additionally, the Act does not apply to any program or activity that lawfully provides benefits or assistance to persons based on a defined age bracket, establishes criteria for participation in age-related terms, or describes intended beneficiaries in such terms (such as the elderly or children).¹⁴

BYU–Hawaii is subject to the Age Discrimination Act because it is a postsecondary institution, and—although a private university—it does receive federal financial assistance in the form of student financial aid. Thus, the university must comply with the Act with respect to its students and in non-employment contexts. To the extent BYU–Hawaii receives federal money from specific federal agencies, it is also subject to the Age Discrimination Act regulations published by each respective funding agency.¹⁵

IV. REQUIREMENTS

To comply with the Age Discrimination Act, a university must not exclude persons from participation, deny benefits, or exhibit or allow discrimination based on age,¹⁶ whether directly or through contract.¹⁷ These requirements also apply to any subrecipients of federal benefits.¹⁸ Recipients of federal aid must ensure compliance with the Act and take any necessary steps to eliminate any violations of the Act.¹⁹

A. Exceptions

Some actions that discriminate based on age (or have the effect of discriminating based on age)—and would otherwise violate the Age Discrimination Act—are allowed in the following situations:

1. The action reasonably takes into account age as factor necessary to the normal operation or achievement of a statutory objective of a program or activity.²⁰ This means age is used to

¹⁰ 42 U.S.C. § 6102 (prohibiting discrimination under “any program or activity receiving Federal financial assistance”).

¹¹ *Id.* § 6107(4)(B)(i).

¹² 34 C.F.R. § 110.3 (2017); 45 C.F.R. § 90.4.

¹³ 42 U.S.C. § 6103(c) (stating that the Age Discrimination Act does not authorize action “with respect to any employment practice of any employer”).

¹⁴ *Id.* § 6103(b)(2); *see also* 34 C.F.R. § 110.2(b) (stating the same exemptions).

¹⁵ *See e.g.*, 10 C.F.R. pt. 4, subpt. C (NRC); 10 C.F.R. pt. 1040, subpt. E (Dep’t of Energy); 13 C.F.R. pt. 117 (SBA); 15 C.F.R. pt. 20 (Dep’t of Commerce); 29 C.F.R. pt. 35 (Dep’t of Labor); 31 C.F.R. pt. 23 (Dep’t of the Treas.); 40 C.F.R. pt. 7, subpt. F (EPA); 44 C.F.R. pt. 7, subpt. E (FEMA); 45 C.F.R. pt. 617 (NSF).

¹⁶ 42 U.S.C. § 6102; 28 C.F.R. pt. 42, subpt. I (Dep’t of Justice).

¹⁷ 34 C.F.R. § 110.10(b); 45 C.F.R. § 90.12(b).

¹⁸ A subrecipient refers to any entity to which a recipient extends or passes on federal financial assistance. *See* 34 C.F.R. § 110.3 (stating that a subrecipient “has all the duties of a recipient”).

¹⁹ 34 C.F.R. § 110.20; 45 C.F.R. § 90.42.

²⁰ 42 U.S.C. § 6103(b)(1)(A); 34 C.F.R. § 110.12; 45 C.F.R. § 90.15. “Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.” 34 C.F.R. §



approximate other characteristics that must be measured but cannot be measured directly and can be approximated by using age.²¹

2. The action is based on reasonable factors other than age.²² In such cases, an action may be based on a non-age-related factor only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective.²³

Additionally, affirmative action to overcome the results of age discrimination is permitted, even in the absence of finding discrimination.²⁴

B. Specifications

Under the Age Discrimination Act, recipients of federal financial benefits must adhere to all of the following requirements.

1. Record Keeping and Information Access

Recipients must maintain records, provide information, and allow the U.S. Department of Education (ED) access to records in order for ED to determine whether the recipient is in compliance with the Act and related regulations.²⁵ Likewise, recipients must permit reasonable access to books, records, accounts, reports, facilities, and other information to the extent ED determines necessary.²⁶

2. Designated Coordinator

Recipients must designate at least one employee as responsible for coordinating the recipient's efforts to comply with and carry out its responsibilities under the Act and these regulations, including investigation of any complaints about possible violations.²⁷

3. Notice

Recipients must provide all beneficiaries of the federal assistance²⁸ with access to current information regarding the provisions of the Act and related regulations, including the name or title, address, and telephone number of the responsible employee.²⁹ Recipients must also notify any subrecipients of their obligations under the Act and related regulations.³⁰

110.11(a). "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." 34 C.F.R. § 110.11(b).

²¹ 34 C.F.R. § 110.12.

²² 42 U.S.C. § 6103(b)(1)(B); 34 C.F.R. § 110.13; 45 C.F.R. § 90.15.

²³ 34 C.F.R. § 110.13; 45 C.F.R. § 90.15.

²⁴ 34 C.F.R. § 110.15; 45 C.F.R. § 90.49(b).

²⁵ 34 C.F.R. § 110.22(a); 45 C.F.R. § 90.45(a).

²⁶ 34 C.F.R. § 110.22(b); 45 C.F.R. §§ 90.45(b).

²⁷ 34 C.F.R. § 110.25(a).

²⁸ For example, students receiving financial aid.

²⁹ 34 C.F.R. § 110.25(b); 45 C.F.R. § 90.43(a)(3).

³⁰ 34 C.F.R. § 110.21; 45 C.F.R. § 90.43(a)(1).



4. *Grievance Procedures*

Recipients must adopt and publish grievance procedures for processing and resolving complaints regarding any actions that would be prohibited by the Age Discrimination Act in a prompt and equitable manner.³¹ Recipients must also refrain from any form of intimidation or retaliation against a person who attempts to submit a complaint or assert a right protected by the Act or related regulations.³²

5. *Assurance*

Recipients must sign a written assurance, on a form specified by the ED, that the program or activity will operate in compliance with the Age Discrimination Act.³³

C. *Self-Evaluation*

Recipients employing fifteen or more full-time employees may be required to complete a written self-evaluation of its compliance with the Act and related regulations.³⁴

V. **PENALTIES**

Failure to comply with this Act may result in the termination of a federal grant or refusal to continue providing financial assistance.³⁵ Termination of a federal grant will be limited to the particular program or activity or part of the particular program or activity which is in violation of the Act.³⁶ ED may also enforce the Act and related regulations by referral to the Department of Justice³⁷ or to any federal, state, or local government agency.³⁸

VI. **COMPLIANCE CALENDAR**

BYU–Hawaii is required to sign ED’s Program Participation Agreement every six years to certify its compliance with the Age Discrimination Act and necessary provisions of the Higher Education Act.³⁹ This agreement makes BYU–Hawaii’s participation in any Title IV program conditional upon compliance with this agreement and other regulations, including the provisions of the Age Discrimination Act.⁴⁰

VII. **STAYING UP-TO-DATE**

The following websites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
U.S. Department of Labor: Age Discrimination Act of 1975	The Act as published on the website of the U.S. Department of Labor

³¹ 34 C.F.R. § 110.25(c).

³² 34 C.F.R. § 110.34; 45 C.F.R. § 90.46.

³³ 34 C.F.R. § 110.23(a).

³⁴ *Id.* § 110.24(a); *see also* 45 C.F.R. § 90.43(b) (requiring a written self-evaluation within eighteen months of the effective date of the agency regulations that includes any age distinctions used and justification for each age distinction imposed on the program or activity).

³⁵ 42 U.S.C. § 6104(a)(i) (2017).

³⁶ *Id.* § 6104(b).

³⁷ 34 C.F.R. § 110.35(a)(2)(i).

³⁸ *Id.* § 110.35(a)(2)(ii).

³⁹ *Id.* § 668.13(b)(1). *See also* 34 C.F.R. 110.23(a).

⁴⁰ *Id.* § 668.14.



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DOCUMENT/REFERENCE	DESCRIPTION
Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS	Overview of 45 C.F.R. § 91, including historical background and related regulations of the Act
HEA Program Participation Agreement	Requirements for participating in any federally funded Title IV, HEA program, including compliance with the Act
ED Overview of Age Discrimination	This page provides an overview of the Age Discrimination Act and provides links to the relevant sections of the law
ED Questions and Answers about Age Discrimination	This page details common questions and answers concerning the provisions of the Age Discrimination Act