

**ANNUAL REPORT TO CONGRESS  
ON IMPLEMENTATION OF  
THE AGE DISCRIMINATION ACT OF 1975**

**FISCAL YEAR 2021**

March 2022

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## BACKGROUND

In November 1975, Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107), hereafter referred to as the “Age Act,” as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Age Act prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance (FFA). The Age Act states that, except for limited exceptions, “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.” 42 U.S.C. § 6102. The Government-wide regulation implementing the Age Act is found at 45 C.F.R. Part 90.

The Age Act does not apply to programs of direct assistance, in which federal funds flow directly and unconditionally from the federal government to individual beneficiaries (such as in the Social Security program). The Age Act also does not prohibit the use of age as a factor that is necessary to the normal operation of a program, and it does not apply to age distinctions established under the authority of any federal, state, or local statute, or ordinance adopted by an elected, general purpose legislative body, including distinctions that create special benefits for old or young persons. In addition, the Age Act does not apply to discrimination on the basis of age in employment, which is covered by the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621 – 634) (ADEA). The ADEA is administered by the Equal Employment Opportunity Commission (EEOC).

Prior to the development of any regulations, the Age Act required the U.S. Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and Congress on January 10, 1978. After receipt of the report from the Commission and the federal agency responses to that report, Congress considered amendments to the Age Act. In October 1978, Congress amended the Age Act (Pub. L. 95-478).

The amendments include the following: (1) a private right of action to the Age Act; (2) a mechanism for the disbursement to alternate recipients of funds that have been withheld under the Age Act; (3) a requirement that the Department of Health, Education and Welfare (HEW) (now the Department of Health and Human Services or HHS) approve the final regulations of other federal agencies; (4) made the effective date of regulations implementing the Age Act no earlier than July 1, 1979; (5) a requirement for annual reports to Congress on progress in implementing the Age Act; and (6) removal of the word “unreasonable” from the Age Act’s statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the original Age Act. The amended Age Act continues to apply to individuals of all ages.

The Commission published the second part of its study in January 1979. The Age Act required each affected federal agency to respond to the Commission’s findings and recommendations; and provided time for Congress to consider amendments to the Age Act. The Age Act required HEW to issue proposed and then final general regulations setting standards to be followed by all federal departments and agencies in implementing the Age Act. *See* 42 U.S.C. § 6103(a)(1). HEW issued final general regulations on June 12, 1979. Those general regulations and the prohibition against age discrimination became effective on July 1, 1979.

The Age Act requires each federal department or agency which operates programs of FFA to issue proposed and then final regulations which must be consistent with the general regulations. *See* 42 U.S.C. § 6103(a)(4). The Secretary of HEW (now HHS) must approve all agency and department

regulations. On September 24, 1979, HEW issued proposed age discrimination regulations governing the actions of recipients of HEW funds. In May 1980, HEW officially became HHS according to the Department of Education Organization Act (Pub. L. 96-88).

The Age Act gives HHS the responsibility of coordinating the federal government's efforts to comply with the Age Act. Section 308(n) of the Age Act requires the Secretary of HHS to compile, analyze and evaluate reports submitted from each federal agency implementing the Age Act. As such, each federal agency that provides FFA to programs and activities must submit a report to the Secretary of HHS describing steps taken to implement the Age Act during the preceding fiscal year. This Annual Report to Congress on Implementation of the Age Discrimination Act (Age Act Report) is a summary and analysis of the reports forwarded by these agencies. See 42 U.S.C. § 6106a.

During FY 2021, federal agencies, similar to other sectors of society, continued to be adversely impacted by the COVID-19 pandemic. Office closures, adaptive technology, and other operational changes were made to ensure the continuation of essential government programs and services for people of all ages, and to ensure the safety of federal employees and the public.

In the fall of 2021, the HHS Office for Civil Rights (OCR) sent a data request to 28 federal agencies that administer FFA programs covered by the Age Act. Three agencies were unable to provide a comprehensive report of their FY 2021 Age Act activities.<sup>1</sup> Most agencies' activities were continuations of programs from previous years, demonstrating an ongoing and serious commitment on the part of the federal government to enforce the Age Act. This is the 40<sup>th</sup> Age Act Report submitted to Congress.

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<sup>1</sup> The Department of State (DOS), the National Endowment for the Humanities (NEH), and the United States Agency for International Development (USAID) did not provide a report for FY 2021.

# AGE ACT ACTIVITIES

## I. Executive Summary

This Report covers the following areas:

- Development of Age Act Regulations

Twenty-four of the 28 agencies have published Age Act regulations. This issue showed no change since FY 2020.

- Complaints

In FY 2021, there was a significant increase in the number of new Age Act complaints. Twelve agencies received new complaints for a total of 1,441 complaints. The Department of Education (ED) received the most complaints (66%), followed by HHS (28%) and the Department of Agriculture (USDA) (4%). Agencies closed or resolved 1,416 complaints (new and carry-overs), with 94% of those closed administratively.

- Mediation

Out of the twelve agencies that received new complaints, four agencies referred a total of 128 complaints to the Federal Mediation and Conciliation Service (FMCS) for mediation. Twenty percent of these cases were successfully mediated.

- Compliance Reviews

Age-related compliance reviews increased slightly in FY 2021, after several years of decline. Six agencies initiated compliance reviews, with a combined case workload of 233 cases. One hundred and fifty-two reviews were closed, with the majority (86%), closed without finding sufficient evidence of a violation.

- Technical Assistance and Outreach, Training, and Other Activities

Federal agencies' technical assistance, outreach and personnel training efforts indicate that they continued to take steps in FY 2021 to advance the goals of the Age Act and prohibit discrimination on the basis of age in programs or activities receiving FFA.

## II. Status of Agencies' Regulations

From FY 2014 to FY 2017, there were significant advances by agencies in the development of Age Act regulations. However, there were no major developments from FY 2018 to FY 2021. Twenty-four out of 28 agencies have published final Age Act regulations. The remaining four agencies provided updates on their progress in developing their regulations, as follows:

- AmeriCorps continues to assess whether to combine its civil rights regulations for federally assisted and conducted programs, including age discrimination regulations, into one comprehensive regulation. Once a determination has been made, AmeriCorps will revise the regulations accordingly. AmeriCorps has recently hired personnel to focus on policy needs and plans to establish a timeline for drafting a regulation in FY 2022.
- The Department of Defense (DOD) continues to develop a regulation implementing the Age Act and anticipates publication in FY 2022.
- The Department of Transportation (DOT) coordinated with HHS in 2015 when it started the process of developing its Age Act regulation. HHS will review DOT's draft when it is complete.
- The National Credit Union Administration (NCUA) appreciated HHS's review and approval of its proposed, combined nondiscrimination regulations in 2010. Before issuance the NCUA plans to receive results from a consultation with the EEOC and the Department of Justice, and then it will issue the full complement of nondiscrimination rules in its proposed Part 730, as originally intended.

HHS will continue to review draft regulations and offer assistance to the agencies that have not published their regulations.<sup>2</sup>

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<sup>2</sup> Additional information about agencies' implementing regulations is available in Appendix B.

### III. Complaints

During FY 2021, 12 federal agencies reported receiving at least one new age discrimination complaint, a slight increase from ten agencies in FY 2020. Overall, agencies received 1,441 new complaints, an increase from 838 new complaints in FY 2020. This was a 71% increase. As illustrated in Table I, the majority of new complaints were received by ED (66%), followed by HHS (28%), and the USDA (4%), similar to previous years.

**Table I: New Complaint Receipts FY 2012 – 2021<sup>3</sup>**

AGENCY	FY 2012	FY 2013	FY 2014	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
AmeriCorps	0	3	4	4	0	2	4	2
DOD	0	0	0	1	0	0	0	0
DHS	6	0	0	0	0	1	0	0
DOE	0	0	0	2	0	1	0	2
DOI	1	1	0	0	0	0	0	0
DOJ	3	26	8	0	8	26	15	15
DOL	25	19	24	18	30	4	4	6
DOS	13	9	9	13	8	-	0	-
DOT	2	1	0	0	0	0	1	4
ED	511	522	651	672	592	566	488	955
EPA	1	0	0	0	0	0	0	1
HHS	67	53	48	75	122	190	251	397
HUD	14	6	5	49	32	2	4	2
IMLS	0	1	0	2	0	2	0	0
NEA	0	0	0	1	0	0	0	0
NSF	-	-	-	-	-	0	5	1
NRC	0	0	2	0	0	0	0	0
USDA	32	58	35	48	62	88	60	51
VA	1	2	1	0	8	14	6	5
<b>TOTALS</b>	<b>676</b>	<b>701</b>	<b>787</b>	<b>885</b>	<b>862</b>	<b>896</b>	<b>838</b>	<b>1,441</b>

The 1,441 new complaints combined with 257 carry-over complaints from previous fiscal years created a government-wide workload of 1,698 complaints (higher than in FY 2020 (1,136), FY 2019 (1,249), and FY 2018 (1,341)). The issues raised in the age-related complaints varied based on the programs administered by each agency. The most frequently cited issues involved the denial of benefits or services by a program receiving FFA, and harassment or poor treatment.<sup>4</sup>

<sup>3</sup> There were no Age Act Reports to Congress for FY 2015 or FY 2016.

<sup>4</sup> Additional information about complaints is available in Appendix C.

ED received the most age discrimination complaints of any agency. ED's complaint caseload, including new and carry-over complaints, totaled 1,103. The most frequent allegations ED investigated involved discriminatory treatment and retaliation.

The majority of HHS complaints involved the denial of services or the denial of insurance coverage for medical procedures or medications. This was similar to FY 2020 and FY 2019. There were also a few complaints involving child welfare and *Olmstead* community-based placement issues.<sup>5</sup> However, the majority of complaints involved issues outside of OCR's legal authority including health care quality issues, employment, policing, and housing.

The majority of USDA's complaint activity was attributed to problems with communication and customer service between the public and personnel at state and local agencies. The Department of Housing and Urban Development (HUD) received complaints centered on the refusal to rent, or terms and conditions of rent based on age, specifically for older adults or for youth. The most frequent issues received by the Department of Veterans Affairs (VA) involved allegations of unfair or poor treatment, and the denial of healthcare benefits and services.

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<sup>5</sup> In *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999), the Supreme Court of the United States ruled that "unjustified isolation ... is properly regarded as discrimination based on disability," a decision that requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.



Table II below illustrates case closures and outcomes by each agency (including new and carry-over complaints):

**Table II: Complaint Closures and Outcomes FY 2021**

<b>AGENCY</b>	<b>Insufficient Evidence of Violation</b>	<b>Specific Finding of Violation</b>	<b>Agreement to Implement Corrective Action</b>	<b>Administrative Closure</b>	<b>TOTAL CLOSURES</b>
<b>DOE</b>	0	0	0	1	<b>1</b>
<b>DOJ</b>	18	0	0	0	<b>18</b>
<b>DOL</b>	1	2	0	3	<b>6</b>
<b>DOT</b>	1	2	0	3	<b>6</b>
<b>ED</b>	21	1	2	934	<b>958</b>
<b>EPA</b>	0	0	0	1	<b>1</b>
<b>HHS</b>	11	0	2	361	<b>374</b>
<b>HUD</b>	1	1	1	1	<b>4</b>
<b>NSF</b>	0	0	0	1	<b>1</b>
<b>USDA</b>	14	0	1	32	<b>47</b>
<b>TOTALS</b>	67	6	6	1,337	<b>1,416</b>

The total number of agency closures in FY 2021 was 1,416, an increase from 913 in FY 2020 and 969 in FY 2019. Ninety-four percent of cases were administratively closed (up from 89% in FY 2020 and FY 2019). Five percent were closed because there was insufficient evidence of a violation (down from nine percent in FY 2020 and FY 2019). None of the agencies reported any significant case resolutions, similar to prior years when no more than a couple of agencies reported significant cases.

#### **IV. Mediation**

The government-wide regulation implementing the Age Act requires that age-related complaints received by agencies that administer programs receiving FFA be referred for mediation by an agency designated by the Secretary of HHS. See 45 C.F.R. § 90.43(c)(3). The HHS Secretary designated the Federal Mediation and Conciliation Service (FMCS) as that agency.

Over the past few years, FMCS has worked with agencies to promote its mediation services. FMCS developed and disseminated a new, simpler form for requests for mediation to federal agencies. When FMCS's efforts are unsuccessful, FMCS returns the age-related complaints to the receiving agency for processing.

Out of twelve agencies that received new complaints in FY 2021, four referred complaints to FMCS, similar to FY 2020 and FY 2019, but far fewer than 75% of agencies in FY 2018. Those four agencies – AmeriCorps, DOL, ED, HHS, and USDA – reported referring a total of 128 complaints to FMCS, a decrease from 148 complaints in FY 2020, 252 in FY 2019 and 290 in FY 2018. Twenty-five (or 20%) of these complaints were successfully resolved through the mediation process, a substantial decrease when compared to 61% of referred complaints in FY 2020, but closer to the 15% of referred complaints in FY 2019.<sup>6</sup>

There were 1,507 complaints that were not referred to FMCS, an increase from 809 in FY 2020, 994 in FY 2019, and 571 in FY 2018. Agencies reported that complaints were not referred to FMCS because they were: (1) referred to other mediation providers; (2) under further review by the receiving agency; (3) referred in previous years; or (4) administratively closed.<sup>7</sup>

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<sup>6</sup> Mediation success data was unavailable for FY 2018.

<sup>7</sup> Additional information about mediation efforts is available in Appendix D.

## V. Compliance Reviews

Age Act compliance reviews are often incorporated into general civil rights compliance reviews of FFA recipients' implementation of procedural and programmatic requirements, including notices of nondiscrimination and the use of age as a factor in recipients' programs. In FY 2021, agencies were mostly limited to desk-audits unlike in previous years when agencies reported a wide range of activities including post-award audits and on-site visits in order to assess compliance.

In FY 2021, six agencies reported conducting compliance reviews, with a combined caseload of 233, a slight increase from 195 in FY 2020 and 183 in FY 2019. These reviews were conducted by the Department of the Interior (DOI), Department of Labor (DOL), General Services Administration (GSA), U.S. Nuclear Regulatory Commission (NRC), the Tennessee Valley Authority (TVA), and USDA.

Table III shows the slight increase in age-related compliance reviews, led by NRC and USDA.

**Table III Compliance Review Workload FY 2012 – 2021<sup>8</sup>**

AGENCY	FY 2012	FY 2013	FY 2014	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>AmeriCorps</b>	114	129	131	195	287	43	0	0
<b>DOI</b>	-	-	-	-	0	0	21	14
<b>DOL</b>	-	-	-	-	0	0	3	5
<b>DOT</b>	0	0	0	43	33	0	0	0
<b>GSA</b>	0	0	0	4	11	0	0	15
<b>HHS</b>	2,800	2,535	3,137	0	0	0	0	0
<b>HUD</b>	0	0	2	0	0	0	0	0
<b>NASA</b>	2	1	1	1	0	0	0	0
<b>NRC</b>	106	53	84	46	51	49	23	97
<b>TVA</b>	81	26	27	12	17	7	67	3
<b>USDA</b>	5,333	2,439	3,119	50	50	84	81	99
<b>TOTALS</b>	<b>8,436</b>	<b>5,183</b>	<b>6,501</b>	<b>351</b>	<b>449</b>	<b>183</b>	<b>195</b>	<b>233</b>

<sup>8</sup> There were no Age Act Reports to Congress for FY 2015 and FY 2016.

Table IV below illustrates compliance review closures and outcomes by each agency (including new and carry-over cases):<sup>9</sup>

**Table IV: Compliance Reviews Closures and Outcomes FY 2021**

<b>AGENCY</b>	<b>Insufficient Evidence of Violation</b>	<b>Specific Finding of Violation</b>	<b>Agreement to Implement Corrective Action</b>	<b>Administrative Closure</b>	<b>TOTAL CLOSURES</b>
<b>DOI</b>	0	0	0	14	<b>14</b>
<b>DOL</b>	0	0	2	0	<b>2</b>
<b>GSA</b>	15	0	0	0	<b>15</b>
<b>NRC</b>	97	0	0	0	<b>97</b>
<b>TVA</b>	3	0	0	0	<b>3</b>
<b>USDA</b>	16	0	5	0	<b>21</b>
<b>TOTAL</b>	<b>131</b>	<b>0</b>	<b>7</b>	<b>14</b>	<b>152</b>

Agencies closed 152 compliance reviews, an increase from 119 in FY 2020, and 134 in FY 2019. Most compliance reviews were resolved without sufficient evidence of a violation or closed administratively. Seven were resolved with corrective action and none were found to have evidence of a violation.

<sup>9</sup> Additional information on compliance review activities is available in Appendix E.

## **VI. Technical Assistance and Outreach, Agency Personnel Training, and Other Activities**

The majority of federal agencies reported conducting activities in at least one of the following three areas: (1) technical assistance and outreach; (2) federal agency personnel training; and (3) other activities. These activities included, among others: technical assistance during compliance reviews or upon request by recipients; virtual presentations and trainings for grantees and the public; and distribution of fact sheets and posters on-line and on-site. The sub-sections that follow provide examples of the efforts federal agencies took to promote compliance with the Age Act in FY 2021.<sup>10</sup>

### **A. Technical Assistance and Outreach**

In FY 2021, the Department of Homeland Security (DHS), HHS, USDA and the VA developed the following noteworthy technical assistance tools and guidance:

- DHS Office for Civil Rights and Civil Liberties (CRCL) continued implementation of the DHS Civil Rights Evaluation Tool for recipients of its FFA. The Tool assists DHS grantees and other recipients in understanding and meeting their existing requirements under civil rights laws and regulations, including the Age Act. As part of the biennial tool submission process, recipients provide information on civil rights complaints (including complaints that allege violations of the Age Act), and policies and procedures to fulfill various civil rights obligations. In FY 2021, CRCL, along with Federal Emergency Management Agency (FEMA) Office of Equal Rights, received and reviewed civil rights data from over 150 DHS recipients and provided detailed technical assistance to ensure nondiscrimination in the DHS's assisted programs and activities. CRCL also conducted monthly webinars for DHS recipients on the DHS Civil Rights Evaluation Tool requirement, which included information on how to report to DHS civil rights complaints and lawsuits (including complaints alleging violations of the Age Act).
- As a critical part of HHS's response to COVID-19, OCR provided technical assistance to covered entities, thereby facilitating the provision of health care and human services free of discrimination on the basis of age or disability. OCR was at the forefront of drafting national guidance and participating in conferences, webcasts, and listening sessions related to ensuring civil rights protections that included age nondiscrimination during the national public health emergency. OCR's COVID-19 Civil Rights webpage has a section specifically devoted to age non-discrimination. In addition, OCR stepped in quickly to work with states and health care providers to ensure that consumers received needed COVID-19 testing, treatment, and vaccinations; and that hospitals, facing critical resource shortages, did not deny life-saving treatment based on age or disability.

For example, OCR worked collaboratively and provided technical assistance to the State of Arizona (May 2021), the State of North Carolina (January 2021), the North Central Texas Trauma Regional Advisory Council (January 2021), the Southwest Texas Regional Advisory Council (January 2021), and the Indian Health Service (January 2021), to revise their crisis standards of care guidelines to reflect best practices for serving individuals with disabilities and

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<sup>10</sup> Additional information about agencies' activities is available in Appendix F.

older adults during the COVID-19 pandemic. In addition, in April 2021, HHS published: “New Legal Guidance and Resources to Ensure -- and Expand -- Access to COVID-19 Vaccines for People with Disabilities and Older Adults,” see, [www.hhs.gov/about/news/2021/04/13/new-legal-guidance-and-resources-to-ensure-and-expand-access-to-covid-19-vaccines-for-people-with-disabilities-and-older-adults.html](http://www.hhs.gov/about/news/2021/04/13/new-legal-guidance-and-resources-to-ensure-and-expand-access-to-covid-19-vaccines-for-people-with-disabilities-and-older-adults.html); and [www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html](http://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html).

- The VA Veterans Benefits Administration’s (VBA) poster, “Equal Opportunity is the Law,” provides information regarding individuals’ rights under the Age Act and other laws to applicants, participants, and other interested persons in recipient schools. Recipient schools are required to display the poster in a conspicuous location that is accessible to all students and school employees.

DOL, ED, HHS, the Institute of Museum and Library Services (IMLS), National Endowment for the Arts (NEA), NRC, and USDA provided considerable civil rights outreach through presentations and conferences:

- DOL personnel held a webinar for approximately 35 state equal opportunity officers and representatives of the National Association of State Workforce Agencies (NASWA) to provide technical assistance regarding nondiscrimination plan requirements, and to discuss common discrimination-related issues (including those related to age) faced by officers and their recipients. In addition, DOL developed an online course on nondiscrimination and equal opportunity requirements applicable to the Job Corps program, including the prohibition of, and other requirements related to, age discrimination. Job Corps has reported 10,137 Job Corps personnel participated in the training.
- ED OCR personnel conducted several presentations concerning its enforcement authorities, including the Age Act. Virtual audiences included administrators and personnel from state agencies, colleges, universities, school districts, elementary and secondary schools, parent groups, advocacy organizations, and attorneys. OCR presented its general “harassment” presentation and answered questions about various topics including Free Appropriate Public Education (FAPE), disability access, private schools, nonacademic services, counseling, and transportation.
- HHS regularly presents at conferences and workshops to representatives of HHS FFA recipients and members of the public. Examples of HHS recipients include state and local health and human service agencies, hospitals, nursing homes, health insurance plans, community health centers, and physicians’ offices, among others. In June 2021, HHS OCR gave a presentation at the World Elder Abuse Awareness Day Conference, sponsored by the Arizona Department of Economic Security. OCR’s presentation included an overview of regulations enforced by OCR, and OCR’s compliance activities during the COVID-19 pandemic specifically for older adults and people with disabilities.
- IMLS awards the majority of its funding through the “Grants to States Program,” which supports 59 State Library Administrative Agencies (SLAAs). These SLAAs have responsibility for the development of library services throughout the nation. IMLS extranet site is specifically designed for IMLS grantees to access updated grant award requirements, policies, and compliance information, which includes the Age Act.

- NEA’s Office of Accessibility conducted a series of presentations and workshops for its grantees, as well as organizations dedicated to the aging field. The purpose of these presentations was to educate participants on making quality arts programs available for older adults and people with disabilities. Specifically, the Office of Accessibility:
  - Facilitated a roundtable discussion on accessibility networks at the New Jersey Theatre Alliance on April 1, 2021;
  - Facilitated an Accessibility in the Arts Panel for the New York City Office for Persons with Disabilities celebration on Global Accessibility Awareness Day (GAAD) on May 20, 2021;
  - Presented “Inclusion of People with Disabilities in Arts Programs and Events” to the St. Louis Arts and Culture Accessibility Consortium on July 28, 2021;
  - Presented “Beyond Ramps” to the Artist Communities Alliance Accessibility Session on September 22, 2021;
  - Facilitated and moderated the "FilmEx: NEA Accessibility Workshop" for the Film Festival Alliance on July 15, 2021; and
  - Presented a workshop on accessibility for individuals with disabilities and older adults to graduate at Georgetown University’s museum studies program and Winthrop University’s arts management program.
  
- NRC informed approximately 100 prospective recipients of the NRC’s pre- and post-award compliance review programs and processes, and informed these stakeholders of applicable nondiscrimination regulations, regulatory requirements, and how to achieve voluntary compliance.
  
- USDA Food and Nutrition Service (FNS) provided training to its regional program personnel, and state and local agency personnel at national, regional, and tri-regional conferences reaching over 4,000 state agency attendees and 300 regional program attendees. The Special Supplement Nutrition Program for Women, Infants and Children (WIC), Commodity Supplemental Food Program (CSFP) and the Senior Farmers Market Nutrition Program (SFMNP) includes an age component for eligibility and certification for program benefits which is addressed during training. WIC is available to pregnant and breastfeeding postpartum women, infants, and children up to age six. Individual’s age 60 and older are eligible for CSFP and SFMNP.

Most agencies reported using their websites to provide information regarding civil rights, including the Age Act, to their FFA recipients and the public, for example:

- The Department of Commerce (DOC) Office of Civil Rights (OCR) cooperates with its Office of Acquisition Management and Bureau Grants Officers to oversee compliance with the Age Act and the DOC’s regulation. Information is available to recipients and the public on its website, found at: [www.commerce.gov/cr/policies/legal-authorities-ocr](http://www.commerce.gov/cr/policies/legal-authorities-ocr).
  
- The Department of Energy (DOE) Office of Civil Rights and Diversity maintains a website that informs its employees, the public, and recipients of DOE financial assistance of the prohibition of age-based discrimination under the Age Act and provides information on how a complaint may be filed under the Age Act. The website is available at: [www.energy.gov/diversity/services/civil-](http://www.energy.gov/diversity/services/civil-)

[rights/age-discrimination-act-1975](#)

- DHS CRCL’s website includes information for recipients including the obligation to comply with the Age Act on the DHS Civil Rights Resources for Recipient webpage available at [www.dhs.gov/resources-recipients-dhs-financial-assistance](http://www.dhs.gov/resources-recipients-dhs-financial-assistance).
- The Environmental Protection Agency (EPA) External Civil Rights Compliance Office website includes information about civil rights enforcement and is available at [www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi](http://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi).
- DOJ provides a virtual training program for its recipients on the Age Act. Specifically, the Age Act is covered in online training modules that DOJ makes available to all grantees and the public on the Office of Justice Programs, Office for Civil Rights website available at [www.ojp.gov/training-and-technical-assistance](http://www.ojp.gov/training-and-technical-assistance).
- HHS OCR’s website includes Age Act information that is available at [www.hhs.gov/civil-rights/for-individuals/age-discrimination/index.html](http://www.hhs.gov/civil-rights/for-individuals/age-discrimination/index.html). The website also has links to Age Act fact sheets in the following languages: English, Spanish, Korean, Tagalog, Vietnamese, Chinese, French, Polish, Portuguese, and Russian. Further, OCR offers technical assistance to Medicare Part A applicants on compliance with the Age Act through the attestation process in OCR’s web portal.
- HUD’s website, [www.HUD.gov](http://www.HUD.gov), provides information for the public on the Age Act and the process for filing a complaint. The public may also seek assistance with Fair Housing questions through HUD’s toll-free number, available on the website.
- IMLS posts information and educational materials on its website regarding civil rights programs (including the Age Act), as well as complaint forms and assurance of compliance forms. The website is available at [www.imls.gov/grants/manage-your-award/administration/legal-references](http://www.imls.gov/grants/manage-your-award/administration/legal-references).
- NEA’s Office of Accessibility continues to update and expand the resource section of its website to include new accessibility resources, links, and articles. The are available at [www.arts.gov/impact/accessibility/publications-checklists-and-resources](http://www.arts.gov/impact/accessibility/publications-checklists-and-resources).
- USDA Food Safety and Inspection Service (FSIS) provided technical assistance and outreach to its federally assisted State Meat and Poultry Inspection (MPI) programs. For example, the agency’s “at least, equal to” guidelines were made available to the state MPI programs through the agency’s website available at [www.fsis.usda.gov/guidelines/2016-0011](http://www.fsis.usda.gov/guidelines/2016-0011). These guidelines address civil rights requirements for state programs to include the prohibition of discrimination on the basis of age. In addition, USDA continued to ensure that the “And Justice for All” poster, which includes age as a protected basis, was posted on its website for recipients, beneficiaries, and the public. It is available at <https://nifa.usda.gov/resource/and-justice-all-poster>. Additionally, the Foreign Agricultural Service (FAS) and its recipients also continue to display the “And Justice for All” poster and published a nondiscrimination statement for the public and its federal employees.



## **B. Agency Personnel Training**

Nearly half of agencies reported providing personnel training on the Age Act, often included in their general civil rights training. The U.S. Agency for Global Media (USAGM), DOI, GSA, HHS, HUD, IMLS, NEA, NRC, TVA, USDA, and VA all conduct civil rights training for their personnel on a periodic basis, with special emphasis on providing training to new personnel. Training was provided in a variety of settings, including orientations, meetings, and online tutorials. The following are highlights of agencies' training accomplishments:

- DOI's Office of Diversity, Inclusion and Civil Rights (ODICR) hosted monthly meetings to discuss issues relating to the various civil rights requirements and provided training sessions related to compliance activities. During FY 2021, the ODICR and Bureau civil rights personnel participated in various conferences and training programs with federal, state, and local personnel where the requirements of the various civil rights regulations and statutes, including the Age Act, were presented and discussed.
- IMLS ensured that its supervisors and personnel employees received annual training on their roles and responsibilities with regard to ensuring that its grant programs and work environment remain free from all forms of discrimination, including age discrimination.
- NEA presented a comprehensive training for NEA personnel entitled, "Accessibility & Disability Inclusion Training," on March 31, 2021.
- The NRC, through the Office of Small Business and Civil Rights (SBCR), provided technical assistance to its internal offices on the pre-and post-award compliance review processes. The training provided greater understanding of the agency's compliance with federal regulations, agency policies, procedures, and practices. The NRC also provides its employees with management directives (MDs) and accompanying handbooks that cover equal opportunity and fair practice laws, including the Age Act.
- USDA provided the following training to its personnel on the Age Act:
  - Rural Development (RD) included the Age Act in a comprehensive civil rights annual training that was presented to agency personnel and recipients. The RD Program Civil Rights Training Team updated its training work plan, which included measures to train internal and external customers on the Age Act. Due to Covid-19 restrictions for travel and social distancing, trainings were provided utilizing various sources such as PowerPoint, MS Teams, and Teams Live. Training was provided to employees in the following states: Kentucky, South Carolina, West Virginia, New Mexico, Arizona, Maine, Delaware, Indiana, Wisconsin, Missouri, and Minnesota. Trainers discussed the Age Act as it related to program delivery and applicant eligibility;
  - FAS disseminated its "Civil Rights and Diversity Policy Statement;" "Anti-Harassment Policy Statement and Procedures;" "USDA Non-Discrimination Statement;" and "USDA's Civil Rights Policy" to its employees. The documents include a section on nondiscrimination based on age;
  - FNS Civil Rights personnel provided training to program personnel on identifying age as a basis applicable to all nutrition assistance programs. The Age Act is covered during the training to include scenarios to illustrate age discrimination issues;

- Forest Service (FS) Civil Rights Personnel carried out Equal Opportunity training to approximately 500 employees nation-wide. Equal Opportunity training includes policy guidance on Title VI of the Civil Rights Act, Title IX of the Education Amendments Act, Age Act, EO 13166, Section 504 and 508 of the Rehabilitation Act, and Architectural Barriers Act;
- FSIS employees attended civil rights-related webinars and trainings. In most of these instances, age discrimination was included in the trainings;
- National Institute of Food and Agriculture (NIFA) provided a presentation in “AgLearn” for all employees to understand civil rights laws, including the Age Act. The agency will make it mandatory in FY 2022, and will make it available on an annual basis; and
- National Resources Conservation Service (NRCS), National Employee Development Center (NEDC) offers a course entitled “Civil Rights and Program Delivery.” This course is offered to employees at least once each quarter and has been requested as a specific training seminar by individual states. The objective of this course is to raise awareness for field level personnel and how they can diversify their boards and councils, as well as how to collect and analyze program data on the county level to attract non-traditional and traditionally underserved participants to NRCS programs.
- The VA trained its personnel on the following courses: “EEO Complaint Process, Harassment Prevention and a Respectful Workplace” and “External Civil Rights Discrimination Complaint Program.” These trainings included information regarding the identification of and effective strategies in dealing with discrimination and harassment claims based on age. In total, over 2,000 employees participated in these training opportunities.

### **C. Other Agency Activities**

Below are additional examples of noteworthy Age Act activities:

- Several agencies reported that they conduct periodic desk audits and/or pre-award reviews of their recipients of FFA. These include, but are not limited to, DOE, NRC, and USDA. In addition, GSA provides hardcopy and electronic posters, on-site visits, and webinars, in addition to pre-award reviews, to special subsections of their agencies, recipients, and the public.
- Many agencies reported requiring grant applicants to submit assurances that they will comply with civil rights laws and regulations, including the Age Act. These agencies include DOE, HHS, National Aeronautics and Space Administration (NASA), NCUA, and NRC, among others.
- DHS’s FEMA provided training and technical assistance regarding nondiscrimination in disaster assistance, including on the Age Act. Additionally, FEMA distributed a brochure to disaster survivors entitled “Your Civil Rights and Disaster Assistance” that references age discrimination as a prohibited factor in federal disaster assistance.
- DOE’s Office of Civil Rights provided suggested edits for the DOE Guide to Financial Assistance, which is a reference guide to be used by DOE officials that determine FFA. The edits included an expanded explanation of federal civil rights laws, including the Age Act, and outlined the related compliance responsibilities of FFA recipients, as well as DOE’s

enforcement abilities related to non-compliance.

- DOI's Departmental Office of Diversity, Inclusion and Civil Rights (ODICR); Bureau of Land Management; Fish and Wildlife Service; Bureau of Reclamation; U.S. Geological Survey; National Park Service; Office of Surface Mining; Bureau of Safety and Energy Enforcement; Bureau of Ocean Energy Management; and Bureau of Indian Affairs provided non-discrimination departmental and bureau-specific policies, which included information about the Age Act, on its websites, brochures, technical assistance and training programs, and compliance reviews.
- HHS OCR is responsible for coordinating the federal government's compliance efforts under the Age Act. Each year OCR drafts the interagency report, which summarizes and analyzes data from each federal department and agency that has responsibilities under the Age Act. OCR also responds to questions from agencies regarding the development of their Age Act regulations, challenging or novel cases, and the mediation process.
- VA's Veterans Benefit Administration (VBA) Education Contract Compliance Specialists and Education Liaison Representatives examined the proprietary schools' policy statements and reviewed the schools' student catalog to ensure that Age Act compliance information was contained within those documents. Furthermore, the Office of Resolution Management, Diversity, & Inclusion (ORMDI) VBA EEO Liaison Office provided technical assistance to education service personnel regarding the provisions of the Age Act. This training included non-discrimination policies and practices for customers and visitors.

Other agencies (NEA, DOT, and USDA) reported on ways they enhance the participation of individuals in certain age ranges (in particular, older adults) that may be underrepresented in the agencies' programs. Some examples follow:

- NEA awarded several significant research grants to help older adults.
  - NEA awarded the Institute for Therapy Through the Arts (ITA) in Evanston, IL \$90,000 for research. The grant supports a mixed-methods, experimental study examining outcomes of a music-based program for older adults with dementia and their caregivers. Individuals with moderate-to-severe dementia living in memory care facilities and their caregivers will be placed into one of two groups: 1) Musical Bridges to Memory (MBM), a 12-week music program, or 2) a control group who receives standard care without a music program. In MBM, caregivers will engage weekly in communication skills training. Adults with dementia will listen to a set of pre-recorded music, and pairs of adults with dementia and their caregivers will attend a live music performance followed by a breakout group to practice communication skills. Assessment tools for both the intervention group and the control group will include pre- and post-measures and behavioral observations of social behaviors for adults with dementia and their caregivers. There will be separate measures for companion satisfaction among caregivers, and for mood and neuropsychiatric symptoms in adults with dementia.
  - NEA awarded the Iowa State University of Science and Technology \$90,000 for research. The grant supports a study of the underlying mechanisms by which music may improve motor function in adults with Parkinson's disease. Clinical and related outcome measures will be taken before and after eight weeks of a non-arts intervention and after eight and sixteen weeks of group singing. Researchers hypothesize that group singing will yield improvements in clinical motor symptoms and positive changes

in cortisol and inflammatory markers, and improvements in voice, breath control, and ability to swallow. The study also will analyze the relationships between motor symptoms and stress and brain activity in these adults. Additional assessment data will derive from a healthy group of adults without Parkinson's disease. The study results will contribute to a growing body of evidence about the potential benefits of music-based interventions for adults with Parkinson's disease.

- NEA awarded the Medical University of South Carolina for research. The grant of \$80,000 supports a randomized experiment testing music's impact on the brains of older adults with moderate-to-severe Alzheimer's disease. Researchers will compare outcomes associated with two different stimuli: 1) musical selections made by the study participants; and 2) nature sounds. Researchers will administer a battery of surveys and assessments to measure cognitive function and alertness, as well as use functional magnetic resonance imaging (fMRI) to determine whether brain activation varies when stimulated by either music or nature, or when participants are in a resting state. As a secondary outcome measure, the study will use the Clinical Global Impression of Change (CGIC) tool to understand clinical impact.
- NEA renewed its grant to Rice University. The grant of \$182,200 supports projects including 1) a study of the cognitive and mental health outcomes experienced by cognitively impaired subjects receiving a music-based intervention; and 2) the study of the physiological (brain-based) mechanism of action for a music-based intervention in improving or slowing the decline of cognitively impaired patients.
- NEA renewed its grant to Texas Tech University. The grant of \$139,010 supports the following: 1) a study examining whether an animation-making workshop intervention can be used to promote positive therapeutic and cognitive benefits for individuals with autism spectrum disorder; and 2) a study testing whether viewing a multidisciplinary performance, informed by dementia patients and their caretakers, can facilitate awareness and reduction of stigma toward Alzheimer's disease and related dementias.
- NEA awarded Washington University in St. Louis a grant. The grant of \$85,000 supports a randomized-controlled trial examining the effects of classical ballet on gait and balance in older women. Participants will be randomly assigned to either ballet or a social conversation activity in community centers serving low-income older women. Both interventions will be led by trained ballet instructors twice weekly for three months. To measure changes during the study, the researchers will assess the gait, balance, quality of life, and mood of the participants before and after the intervention.
- DOT provided funding to help older adults travel the United States.
  - FRA provides funding oversight to Amtrak, which offers travelers 65 years of age or older a 10% discount on most rail fares on most Amtrak trains. On cross-border services operated jointly by Amtrak and VIA Rail Canada, seniors over 60 are eligible to receive a 10% discount.
  - NHTSA's Office of Behavioral Safety Research (OBSR)/Injury Prevention Division is in the midst of a project to determine whether a video that provides tips to using a rearview video system can improve older driver safety, and another looking at how older drivers, as compared to younger drivers, use L2 technology. The aim is to expand the extent to which older drivers benefit from available technologies. OBSR also is looking at the feasibility of using a cell phone app to support older drivers, and the project objectives and details are under development. (See Older Drivers and Rearview Video Systems, <https://rip.trb.org/View/1425823> and Drivers' Knowledge of Correct Use of New Technology Features in Vehicles, <https://rip.trb.org/View/1658680>.)
  - FHWA and NHTSA provide funding for the Clearinghouse for Older Road User Safety, a centralized source of information about highway safety for older drivers, passengers, pedestrians, and cyclists. FHWA's Older Road Users program is designed to address the engineering aspects of highway and roadway safety for aging populations. This includes compiling community resources for promoting

older road user safety, a handbook for designing roadways for the aging population, and hosting a training on roadway engineering for older road user safety. NHTSA's Older Driver Program represents a proactive step to educate the public on safety as it relates to older drivers. The Older Driver Program includes plans, toolkits, and trainings to assist law enforcement, medical professionals, and family members to help ensure the safety of older drivers on the road.

- USDA continued to conduct Civil Rights Impact Analyses on proposed rules, regulations, and products to identify potential, disproportionate or adverse impact to individuals or classes of individuals protected under the Age Act.
  - FS continued to sponsor the Interagency Senior Pass program that provides admission to Forest Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service sites that charge entrance or standard amenity fees. Those eligible for the Interagency Senior Pass must be U.S. citizens who are over 62 years of age. Admission is provided for the pass holder and any accompanying passengers in a private non-commercial vehicle. The pass is valid for the pass holder's lifetime.
  - FAS continued to require its commodity-based, recipient employees to be provided with an "Introduction to Civil Rights" and "EEO and Cultural Diversity" trainings, which included a section on nondiscrimination based on age. FAS recipients include approximately 82 commodity-based organizations.
  - NIFA modified its compliance review report, an internal tool used by equal opportunity personnel to conduct compliance reviews, to include more specific evaluative subcomponents to assist equal opportunity specialists in determining compliance with the Age Act.

## ANALYSIS AND CONCLUSION

Twenty-four out of the 28 agencies that administer FFA programs covered by the Age Act have published their agency-specific regulations. In FY 2021, there were no significant advancements in regulation development for the remaining four agencies. HHS OCR worked, and will continue to work, with these agencies to review their draft regulations and provide technical assistance consistent with its responsibility to coordinate the federal government's efforts to comply with the Age Act.

With respect to complaint activity, the federal government received 1,441 new complaints, an increase from 838 new complaints in FY 2020. This was a 71% increase. The total federal Age Act complaint workload for FY 2021, which included new and carry-over complaints, was 1,698. As in prior years, ED continued to receive the great majority of age discrimination complaints, followed by HHS and USDA. The most frequently cited issues in age discrimination complaints involved the denial of services or harassment by an agency or program receiving FFA.

In terms of the resolution of Age Act complaints, ten federal agencies reported that they resolved 1,416 complaints in FY 2021, with 1,337 of those resolved administratively. Of the other types of complaint resolutions, 67 were resolved based on insufficient evidence of a violation, six were resolved based on an agreement to undertake corrective action, and six were resolved with a violation Letter of Findings.

Four agencies referred 128 new age discrimination complaints to FMCS for mediation. This was a decrease in referrals from previous years. The success rate for these mediation efforts also decreased to 20%. Most of the complaints that were not referred to FMCS had either been referred to other mediation providers; referred in a prior year; were still under initial review; or were administratively closed.

In FY 2021, six agencies conducted 233 compliance reviews, 38 more than in FY 2020. These agencies resolved 152 reviews, with the majority resolved due to insufficient evidence of a violation.

During the COVID-19 pandemic, federal agencies continued to provide technical assistance and outreach to help the public understand their rights, as well as to help recipients of FFA understand their obligations under the Age Act. Many federal agencies also reported providing training to their employees on the Age Act, including virtual training modules, presentations, meetings, and tutorials. These agencies had more age complaint and compliance review workloads, thus assuring that these trainings reached the majority of personnel most engaged in Age Act enforcement activity.

Nearly half of federal agencies reported conducting additional activities in FY 2021 to increase compliance with the Age Act. Specifically, a few agencies reported on ways they enhance the participation of individuals in certain age ranges (in particular, older adults) that may be underrepresented in the agencies' programs. Such activities, while not required by the Age Act,

serve to open opportunities that otherwise may have been limited, thus enhancing access for individuals of all ages. These programmatic initiatives complement implementation of the Age Act.

In summary, federal agencies received and closed more age discrimination complaints in FY 2021. Most new and carry-over complaints were administratively closed. When complaints were sent to FMCS, 20% were successfully mediated. Federal agencies also conducted and resolved slightly more compliance reviews. These compliance reviews were mostly closed without finding sufficient evidence of a violation. However, federal agencies continued to provide quality outreach, technical assistance, and training to the public; recipients of FFA; and federal employees on the Age Act.

As in previous years, HHS OCR will continue the following activities to promote enforcement of the Age Act:

- Continue to assist agencies that have not yet developed their Age Act regulations;
- Encourage all agencies to disseminate information on the Age Act to the public and recipients;
- Continue to share resources among agencies to promote more effective enforcement of the Age Act by the federal government; and
- Continue to work with FMCS to coordinate and improve the efficiency of the mediation process.

**Appendix A:**  
**List of Abbreviations and Acronyms**

**Federal Agencies**

AmeriCorps	d/b/a Corporation for National and Community Service
DOC	Department of Commerce
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
DOT	Department of Transportation
ED	Department of Education
EPA	Environmental Protection Agency
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IMLS	Institute of Museum and Library Services
NASA	National Aeronautics and Space Administration
NCUA	National Credit Union Administration
NEA	National Endowment for the Arts
NEH	National Endowment for the Humanities
NRC	Nuclear Regulatory Commission
NSF	National Science Foundation



SBA	Small Business Administration
TVA	Tennessee Valley Authority
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
USAGM	United States Agency for Global Media
VA	Department of Veterans Affairs

### **Miscellaneous Acronyms and Abbreviations**

Age Act	Age Discrimination Act of 1975
C.F.R.	Code of Federal Regulations
EEO	Equal Employment Opportunity
EO	Equal Opportunity
FFA	Federal Financial Assistance
Fed. Reg.	Federal Register
FY	Fiscal Year
OCR	Office for Civil Rights/Office of Civil Rights
P.L.	Public Law
U.S.C.	United States Code

## **Appendix B:** **Status of Agencies' Regulations**

**DOC** — DOC's regulation implementing the Age Act was published in 15 C.F.R. Part 20, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance." The regulation was published in the Federal Register on August 13, 1986. In June 2009, the DOC Office of Civil Rights issued a Departmental Administrative Order (DAO) 201-7, "Nondiscrimination in Federally Assisted and Conducted Programs." The DAO was reviewed and recertified in 2019. The DAO integrates several sets of DOC's regulations pertaining to nondiscrimination in federally assisted programs and clarifies the roles and responsibilities for implementation and complaint processing.

**DOD** — DOD's regulation is undergoing an internal review. Following the Federal Register's notice and comment period, the policy will go through the final DOD steps towards issuance, with an anticipated issuance in 2022.

**DOE** — DOE originally published its implementing regulation, 10 C.F.R. Part 1040, Subpart E, on February 27, 1985. See 50 Fed. Reg. 8089. On August 26, 2003, DOE, along with 21 other federal agencies, amended and re-published its regulation to conform to the decision in *Cureton v. NCAA*, 198 F.3d 107 (3d. Cir. 1999). See 68 Fed. Reg. 51348. The regulation is entitled, "Non-discrimination on the Basis of Age—Age Discrimination Act of 1975."

**DHS** — DHS follows the HHS regulation at 45 C.F.R. Part 90, which states general government-wide rules for the implementation of the Age Act. The DHS FEMA has a regulation implementing the Age Act that was published at 55 Fed. Reg. 23078 on June 6, 1990, and amended at 68 Fed. Reg. 51380, on August 26, 2003, and codified at 44 C.F.R. Part 7.

**DOI** — DOI published its final rule implementing the provisions of the Age Act in the Federal Register on January 25, 1989 (54 Fed. Reg. 3596). The rule effectuates the requirements of the Age Act in all programs and activities that receive FFA from DOI. The rule is codified at 43 C.F.R. Part 17, Subpart C.

**DOJ** — DOJ's implementing regulation for the Age Act was published on February 11, 1994, and is codified at 28 C.F.R. Part 42, Subpart I. The statutory provision authorizing the regulation is 42 U.S.C. § 6103(a)(4). DOJ issued the regulation on February 11, 1994, and revised the heading for Subpart I on August 26, 2003.

**DOL** — DOL Civil Rights Center (CRC) published its final rule containing the regulations implementing the Age Act in the Federal Register on April 2, 2004, with an effective date of May 3, 2004. These regulations remain in effect and are codified at 29 C.F.R. Part 35.

**DOS** — DOS's regulations implementing the Age Act can be found at 22 C.F.R Part 143, and were published on April 22, 1980. It was amended on August 26, 2003.

**DOT** — DOT is comprised of the Office of the Secretary (OST), which heads DOT, the Office of the Inspector General, and nine operating administrations (OAs): Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Pipeline and Hazardous Materials Safety

Administration (PHMSA), and Great Lakes St. Lawrence Seaway Development Corporation (GLS).

DOT has not published a regulation implementing the Age Discrimination Act of 1975 (Age Act), as amended (42 U.S.C. 6101-6107), but has processes in place to carry out the intent of the statute. DOT's implementing regulations for Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., which apply to all OAs, require recipients of Federal financial assistance to sign an assurance that they will conduct all activities in compliance with Title VI and its non-discrimination provisions. 49 C.F.R. § 21.7. Appendix E of this assurance is required to be included in all sub-contracts awarded by DOT recipients, and explicitly cites the Age Act as a non-discrimination provision binding the sub-recipient. In addition, as described below, many of DOT's OAs have additional processes, regulations, and requirements in place to prohibit discrimination on the basis of age.

FTA administers its own requirement prohibiting age discrimination. Under Section 5332 of the Federal Transit Act, as amended (49 U.S.C. §5332), FTA is required to ensure nondiscrimination based on age in any project, program, or activity funded by the agency. This prohibition against age discrimination is incorporated into every grant and cooperative agreement and must be agreed to by the grant recipient as a condition of compliance. Each year, FTA recipients sign a list of "Certifications and Assurances" certifying that they will comply with all FTA requirements, including a specific reference to the "Age Discrimination Act of 1975." FTA also requires compliance through incorporation of the Age Act in its Master Agreement in the section titled "Nondiscrimination on the Basis of Age."

FAA's Order 1400.11, titled "Nondiscrimination in Federally-Assisted Programs at the FAA," cites Title VI and the Age Act in the opening paragraph of its cover letter and declares that the Order will set forth the operating procedures for the implementation and enforcement of these authorities. Under Chapter 4 of the Order, "Recipient Obligations," all FAA recipients are required to comply with the Age Act through an assurance included in FAA's Airport Sponsor grant assurances.

FMCSA's Title VI Program implementing regulation directly references Age Act requirements. FMCSA also lists the Age Act as one of the statutory authorities in the FMCSA Title VI Program Assurance, which the CEOs of all FMCSA grant applicants are required to execute. FMCSA recipients are required to have a Title VI Program Compliance Plan, which FMCSA's Office of Civil Rights reviews and approves. Age is included in all protected group recitations throughout the elements of the Plan (i.e., Assurance, Notification to Beneficiaries/Participants, and Complaint Disposition Process).

MARAD recently updated its Maritime Administrative Order 770-772 (Order), which establishes the nondiscrimination policy for its federally-assisted and federally-conducted programs. The Order also identifies the role and responsibilities, and operating procedures, for ensuring compliance with Title VI, Section 504 of the Rehabilitation Act (Sec. 504), Title IX of the Education Amendment Act of 1972, and other authorities of which the Age Act is a part.

NHTSA grantees must sign Certifications and Assurances that they comply with all applicable Federal statutes and regulations, including the Age Act, that are in effect during the grant period.

PHMSA's External Civil Rights Program Guidelines for Grant Recipients covers compliance with civil rights responsibilities, including the Age Act. The Guidelines provide information that recipients can use to create a Civil Rights Program Plan to ensure compliance with non-discrimination authorities including the Age Act. It provides sample notifications to the public of their rights and sample complaint forms for recipients to adopt as part of their complaint processing programs.

Finally, FHWA annually requires state DOTs to submit implementation plans that comply with the Age Act's statutory and administrative requirements. FHWA Division Administrators review and approve these plans (23 C.F.R. 200.9).

**ED** — ED's regulation implementing the Age Act, 34 C.F.R. Part 110, was published on July 27, 1993. The effective date of implementation was August 26, 1993. The regulation was amended most recently through the formal rulemaking process in 2000, resulting in a final regulation which was published in the Federal Register on November 13, 2000, effective December 13, 2000. ED's regulation prohibiting age discrimination applies to all its recipients of FFA, including elementary and secondary schools, trade schools, colleges, universities, and state vocational rehabilitation agencies. The regulation describes the standards for determining age discrimination, the responsibilities of recipients, and the procedures for enforcing the statute and regulation.

**EPA** — EPA's regulations implementing the Age Act were published on June 4, 2010, in the Federal Register at Volume 75, Number 107. See 40 C.F.R. §§ 7.140 – 7.180.

**GSA** — GSA published its implementing regulation, "Discrimination Prohibited on the Basis of Age", on June 4, 1985, available at 41 C.F.R. §§ 101-8.7-101.8.725.

**HHS** — On December 28, 1982, HHS published its final regulation (45 C.F.R. Part 91) implementing the Age Act, for programs or services receiving HHS financial assistance, in the Federal Register. The regulation became effective on January 27, 1983.

**HUD** — HUD's regulation implementing the Age Act was published in the Federal Register on December 17, 1986. The regulation, entitled "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 24 C.F.R. Part 146, became effective on April 10, 1987.

**IMLS** — IMLS has implemented the Age Act with 2 C.F.R. Section 3187.12. See 79 Fed. Reg. 76088, Dec. 19, 2014, as amended at 84 Fed. Reg. 22944, May 21, 2019.

**NASA** — The NASA regulation implementing the Age Act was published as a final rule at 50 Fed. Reg. 13311-13315 on April 4, 1985, and is codified at 14 C.F.R. Part 1252.

**NCUA** — NCUA commits to making the technical corrections identified in § 730.201(f) before publishing the proposed Part 730, Volume 12 in the Federal Register. Before issuing proposed Part 730, Subpart C, governing the Age Act, NCUA would prefer to receive the results from its Equal Employment Opportunity Commission (EEOC) consultation and the DOJ approval processes, and then issue the full complement of nondiscrimination rules in proposed Part 730, as originally intended. The NCUA remains concerned with the potential burden on its Community Development Revolving Loan Fund (CDRLF) recipients in complying with multiple publications of nondiscrimination requirements, as these credit unions typically have limited personnel and resources. However, the NCUA intends in the near term to renew its efforts to obtain approval for, and adopt, the required regulations.

**NEA** — NEA's regulations implementing the Age Act can be found at 45 C.F.R. Part 1156.

**NEH** — NEH published its final regulation implementing the Age Act in the Federal Register on May 9, 2014 (79 Fed. Reg. 26631). The regulation, which took effect on June 9, 2014, is codified at 45 C.F.R.

Part 1172.

**NRC** — The NRC’s regulation implementing the Age Act can be found in 10 C.F.R. Part 4, “Nondiscrimination in Federally Assisted Programs or Activities Receiving Federal Financial Assistance from the Commission,” Subpart C, “Regulations Implementing the Age Discrimination Act of 1975, as Amended.”

**NSF** — NSF’s regulations under the Age Act were published in the Federal Register on December 21, 1984 (Vol. 49, No. 247). NSF’s regulations that implement the Age Act are found at 45 C.F.R. Part 617.

**SBA** — SBA’s Age Act regulation, located at 13 C.F.R. Part 117, is titled, “Nondiscrimination in Federally Assisted Programs of SBA Effectuation of the Age Discrimination Act of 1975, As Amended.” The regulation was published in the Federal Register in October 1985, 50 Fed. Reg. 41648 and was amended on August 26, 2003, 68 Fed. Reg. 51349.

**TVA** — TVA published preliminary regulations on February 2, 1980. TVA’s final regulation implementing the Age Act was published on August 11, 1981, in 46 Fed. Reg. 30811. TVA’s regulations are codified at 18 C.F.R. Part 1309.

**USAGM** — On January 8, 1980, in coordination with the DOS and USAID, the USAGM, formerly known as Broadcasting Board of Governors, issued proposed regulations implementing the Age Act. These regulations were published in the Federal Register in January 1980 and became final on September 23, 1980. They were amended on August 26, 2003 (68 Fed. Reg. 51360).

**USAID** — USAID regulations implementing the Age Act were codified and published at 22 C.F.R. Part 218 on Sept. 23, 1980.

**USDA** — The USDA Age Act regulation, 7 C.F.R. Part 15c, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the U.S. Department of Agriculture,” was finalized and published on January 1, 2016. The regulation prohibits discrimination on the basis of age in programs and activities receiving FFA from USDA. All USDA mission areas and agencies are required to adhere to the provisions set forth in the regulation and related guidance on nondiscrimination on the basis of age.

**VA** — The VA’s internal regulation to implement the Age Act is contained at 38 C.F.R. Part 18, Subpart E. The State Veterans Home (Construction) Program Age Discrimination Guidelines are codified at 38 C.F.R. Part 43, and cross-referenced in Part 59. The State Veterans Homes (Per Diem) Program Age Discrimination Guidelines are finalized at 38 C.F.R. Parts 51, 52, and 58. The National Cemetery Administration follows the guidance in Title 38 to implement the Age Act, and the State Cemetery Grants Program Age Discrimination Guidelines are codified at 38 C.F.R. Part 43.

## **Appendix C:** **Complaints**

**DOL** –The Civil Rights Center (CRC) Office of External Enforcement (OEE) resolved two complaints that involved programs that offer aid, benefits, services, and training as part of the nation’s system of American Job Centers (also known as One-Stop Career Centers) established under the Workforce Innovation and Opportunity Act (WIOA) and its predecessor statute, the Workforce Investment Act (WIA). These were individual complaints involving selection for, receipt of benefits under, or termination from such programs. One of the entities named in the complaints was an individual American Job Center, and the other was a technical college that served as a training provider. Both of these complaints were resolved through settlement agreements that required them to retain specific records and/or collect and analyze demographic data, including data based on age.

**HHS** — OCR received 397 new complaints alleging age discrimination by FFA recipients in FY 2021. Four of those new complaints alleged age discrimination in crisis standards of care plans implemented in response to the COVID-19 pandemic. OCR’s workload in FY 2021 also included 57 age discrimination complaints carried over from previous years, for a total workload of 454 complaints. The number of complaint receipts in FY 2021 is considerably higher than in preceding fiscal years. With 251 complaints received in FY 2020 and 397 complaints received in FY 2021, there was a 58% increase. Similarly, OCR resolved 374 age discrimination complaints in FY 2021; and 278 age discrimination complaints FY 2020. This was a 34% increase. Three hundred and sixty-one complaints were closed administratively; eleven complaints were closed based on insufficient evidence of a violation or no violation; and two complaints were resolved with change achieved. There were no findings of a violation in keeping with previous years. Eighty cases were pending with OCR at the end of FY 2021, an increase from 46 cases at the end of FY 2020 and 74 cases at the end of FY 2019.

**HUD** —HUD’s Office of Fair Housing and Equal Opportunity investigated four age-based complaints in FY 2021. Complaints in FY 2021 include an allegation of discrimination based on one or more bases besides age, such as disability, religion, or race. One of the cases resulted in a conciliation/resolution agreement, one resulted in a compliance finding, one was withdrawn by the complainant, and another resulted in a non-compliance finding and a Voluntary Compliance Agreement.

**USDA** — In keeping with prior years, approximately 71% complaints were from FNS programs, 27% from RD, and two percent from the Risk Management Agency (RMA). Specifically:

- 94% were filed against the Supplemental Nutrition Assistance Program (SNAP), which serves on average 22 million households each month;
- three percent were filed against The Emergency Food Assistance Program (TEFAP), to which Congress appropriated \$317.5 million; and
- three percent were filed against the Senior Farmers’ Market Nutrition Program (SFMNP), which serves on average 726,000 participants each month.

USDA resolved 68% of the total age complaint workload. Of the 47 complaints resolved, 14 were resolved based on insufficient evidence of a violation, one was resolved with an agreement for

corrective action/other change without a specific finding of a violation, and 32 were resolved administratively.

**VA** — The VA's analysis of complaint data revealed that there were no reported age-related discriminatory complaints received by the National Cemetery Administration (NCA). There were four complaints filed with the Veterans Benefits Administration (VBA) and seven complaints filed with the Veterans Health Administration (VHA) within the last few years. These results reflect VA's consistent progress in preventing or proactively addressing age discrimination, which may occasionally occur in federally assisted programs and activities.

## **Appendix D:** **Mediation**

**AmeriCorps** — AmeriCorps referred one age complaint to FMCS. It was not successfully mediated.

**ED** — ED referred 57 cases to FMCS. Of these cases, 10 were successfully mediated. A total of 1,046 cases were not referred to FMCS in FY 2021 because 909 were retained in ED's OCR for investigation; 65 had been referred to FMCS in a previous fiscal year; and 72 were referred to other agencies.

**HHS** — HHS referred 32 complaints to FMCS, an increase from 21 cases in FY 2020, but a decrease from 48 cases in FY 2019 and 38 cases in FY 2018. Only two complaints were successfully mediated in FY 2021. Most new complaints were closed administratively and were not referred to FMCS.

**USDA** — USDA referred 37 cases to FMCS, of which 13 (35%) were successfully mediated, a slight decrease from FY 2020 (46 referred and 16 successfully mediated). A total of 25 cases were not referred to FMCS, mostly because they were closed administratively or referred to internal resolution programs.



## **Appendix E:** **Compliance Reviews**

**DOL** – The regulations promulgated under the Workforce Innovation and Opportunity Act (WIOA) Section 188 require state governors to submit Non-Discrimination Plans (known as NDPs), describing how the state will ensure nondiscrimination and equal opportunity in its workforce development system. Each state NDP must explain the procedures the state has put in place for ensuring nondiscrimination on all bases prohibited by WIOA Section 188, including age. In addition, the WIOA nondiscrimination regulations require Governors to collect and analyze demographic data, explicitly including data and analyses related to age, about program applicants, registrants, participants, and terminees, as well as employees and applicants for employment. Where one or more of these analyses identifies any statistically significant differences in participation by members of a protected group (explicitly including age-based differences), the Governor is required to investigate, in order to determine whether those differences were caused by systemic discrimination. Where systemic discrimination is identified, the Governor must either obtain prompt corrective action, or, as necessary, apply appropriate sanctions. The Governor must also provide CRC with copies of reports of monitoring reviews and of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions.

DOL reviewed 39 NDPs (including NDPs that were submitted during the previous fiscal year). The most frequently encountered deficiency in such NDPs was failure to submit copies of reports of the legally-mandated annual monitoring reviews, including reports of required data analyses. DOL OEE initiated compliance reviews in five cases in which Governors had failed to submit timely NDPs. Two of these reviews were resolved within the fiscal year. The resolutions involved submission of acceptable NDPs. They did not result in any evidence of any pattern or practice of age discrimination.

**NRC** —During the pre-award compliance review process, civil rights specialists engaged recipient personnel through an interactive process and exchange by: 1) reviewing the application and proposed documents and standard forms forwarded by the Acquisition Management Division (AMD) and the designated NRC office; 2) developing a compliance review plan for handling the case and carrying out associated tasks to ensure mandated target dates are met; 3) establishing an initial interview with the potential awardee to determine the appropriate applicant/recipient designee for the purpose of conducting the pre-award compliance review and provide guidance on the applicable nondiscrimination regulations; 4) transmitting the NRC's standard FFA information to the potential awardee by including the "Funding Opportunity Announcement (FOA)" and the Office of Small Business and Civil Rights' (SBCR) authority and purpose in requesting to conduct a pre-award compliance review thus utilizing the collection of information documentation outlined in NRC's Form 781 (Parts A, B, and C) approved by OMB; and 5) conducting a teleconference and follow-up (if warranted) with the authorized official from the institution of higher education on receiving this review and explain the regulatory requirements, compliance obligations, compliance process, and information and documents requested. In addition, SBCR's civil rights team members make relevant inquiries, address questions, provide technical assistance, provide outreach, and prepare compliance reports.

In the post-award compliance review phase, the NRC personnel and recipient employees have continuous interaction throughout the grants period of performance by the following: 1) conducting agency post-award compliance review desk audits including an analytical review of the information/documentation submitted, 2) monitoring recipient compliance with recommendations, 3) coordinating exit interview and summary of findings efforts, (4) training, and (5) requesting and providing technical assistance. There are also discussions focused on the recipient's feedback,

notification of complaints and lawsuits. In addition to the above activities, the NRC also includes a “nondiscrimination statement/provision” in all NRC grants awarded to new recipients which has resulted as a “best practice” for the agency in preventing equal opportunity discrimination and age-related complaints.

**TVA** — TVA conducted three compliance reviews in FY 2021; all were resolved based on insufficient evidence of a violation or without a violation finding. TVA’s compliance reviews provide assistance, and are limited to desk-level audits concerning TVA awards, or self-reported violations. Under TVA’s approach, any reported violations are assessed based on the size and scope of the applicant’s operations; the nature of the violation or alleged violation; and the number of years that have elapsed since the violation or alleged violation occurred.

**USDA** —USDA agencies conducted 99 compliance reviews of agency federally assisted programs. Due to travel restrictions because of the COVID-19 pandemic, Mission Areas and agencies created a virtual-based plan to accomplish compliance review goals. Included in this plan were interviews of recipients, examination of program documents, and virtual desk reviews to assess activities and to review the effectiveness of the enforcement of civil rights laws, Executive Orders and Departmental and agency regulations. Generally, the assessment of recipients’ compliance with the Age Act was one component of several federal civil rights laws reviewed.

## **Appendix F:** **Technical Assistance and Outreach, Personnel Training, and Other Activities**

### **1. Technical Assistance and Outreach to FFA Recipients, Beneficiaries, and the Public**

**DOT** — DOT reported on additional technical assistance and outreach activities.

- The 12th Annual FAA National Civil Rights Training Conference for Airports recognized airports with awards for their commitment to eliminating discrimination based on race, color, national origin, sex, creed, and age. Conference sessions on Title VI and related requirements covered Age Act issues. The Age Act was also incorporated into FAA trainings, presentations and nationwide question and answer sessions during February, March, and April 2021. The topic was also featured during the June Airport Minority Advisory Council virtual conference. FAA included Age Act issues into the first annual Diversity and Inclusion Symposium on July 14-16, 2021. The two-day event featured several topics focusing on promoting an organizational culture that values professional growth, inspires dignity and respect, and celebrates individual differences.
- FTA routinely provides technical assistance to both transit agencies and public transit customers on the half-fare program for seniors. For example, FTA operates a web-based technical assistance tool, “Contact Us,” that individuals use to submit questions. The tool, located on FTA’s home page, includes a dedicated “Half Fare/Discount Fare” category to ensure questions go to the program’s subject matter experts. FTA personnel also conduct trainings and participates in conferences where recipients of agency funds are reminded that discrimination based on age, race, national origin, disability status, and other bases is prohibited.
- FMCSA provides a civil rights technical assistance presentation (FMCSA Basic Title VI Program presentation) to applicants upon request and provided the presentation to new applicants during FY 2021; the presentation includes Age Act issues under the “Assurances” section.
- NHTSA issues guidance documents that clarify existing legal obligations to help regulated entities and the public understand the statutes and regulations NHTSA administers, including guidance documents focused on older drivers. See NHTSA Guidance Documents, [www.nhtsa.gov/laws-regulations/guidance-documents#52946](http://www.nhtsa.gov/laws-regulations/guidance-documents#52946)
- PHMSA provides Age Act information on its external website entitled “External Civil Rights Program Guidelines for Grant Recipients.”

**NASA** — NASA has certain civil rights requirements for recipients of its grant awards and other forms of assistance. Among the most important of these requirements is an assurance by the grantee institution, prior to receiving an award that it is in compliance with all federal civil rights laws, including the Age Act. A signed Assurance of Compliance form (also known as NASA Form 1206) provides grantees with valuable information on specific requirements under the grant related to civil rights laws and requires information on complaints filed against the grantees, including under the Age Act.

## **2. Personnel Training**

**DOC** —During the first two quarters of FY 2021, DOC OCR continued to build its External Civil Rights program through weekly consultation with DOJ’s Civil Rights Division, Federal Coordination and Compliance Section. DOC OCR participated in the DOC’s Virtual Big Acquisitions Conference and delivered a training on External Civil Rights.

**TVA** — TVA’s Office of the General Counsel conducts training upon request on Age Act requirements to TVA employees involved in the federal assistance award process.

**USAGM** — USAGM’s personnel are trained annually on civil rights and equal employment opportunity matters, affording them the expertise needed to guide employees in accordance with current federal regulations. Also, the Agency’s Office of Civil Rights provides a variety of training opportunities, which are made available to agency employees as well as such as contractors and grantees. As a result, USAGM anticipates its efforts can prevent or reduce age discrimination in its programs and activities.

## **3. Other Activities**

**DOC** — DOC requires grant applicants to sign the Standard Form 424B or 424D, which provides DOC with certifications that applicants will comply with the Age Act. Specifically, the Commerce Financial Assistance Standard Terms and Conditions, which are incorporated into each financial assistance award, contain a stipulation that recipients will comply with the Age Act and the Commerce regulation enforcing the Act.

**DHS** — DHS advises its recipients of the Age Act and their compliance obligations through the DHS Standard Terms and Conditions, which is referenced in the Notice of Funding Opportunity Announcement and included with the Notice of Award for DHS grants and other types of financial assistance.

**NCUA** — NCUA only provides federal financial assistance through its Community Development Revolving Loan Fund (CDRLF), a relatively small grant and loan program. In 2021, the CDRLF awarded 112 grants totaling approximately \$1.5 million to low-income designated credit unions nationwide. In 2021, there were no loans issued. As a condition to participate in the program, NCUA requires its recipients to sign a certification form that includes an assurance that the applicant conducts its activities in compliance with civil rights laws, including the Age Act.

**NEA** – The following are institutions that NEA awarded the National Arts Endowment Awards for Arts-and-Aging Projects for Older Adults: Art Works Studio School, Hyattsville, MD; Arts for the Aging-Maryland, Inc., Derwood, MD; Asian American Writers' Workshop, Inc., New York, NY; Bihl Haus Arts, Inc., San Antonio, TX; Brooklyn Ballet, Inc., Brooklyn, NYC; City of Lone Tree, Lone Tree, CO; City of Saint Peters, Saint Peters, MO; Dances for A Variable Population, New York, NY; Denver Brass, Inc., Denver, CO; Fine Arts Work Center in Provincetown, Inc., Provincetown, MA; George Mason University, Fairfax, VA; Giving Voice Initiative, Minneapolis, MN; Haymarket Opera Company, Chicago, IL; Hope College, Holland, MI; Indiana University Trustees of Traditional Arts, Bloomington, IN; Inlandia Institute, Riverside, CA; Lake George Opera Festival Association, Inc., Saratoga Springs, NY; Madison Symphony Orchestra, Inc., Madison, WI; Magical Experiences Arts Company, Ltd., Baltimore, MD; Marshall County Retired Senior Volunteer Program, Inc., Guntersville, AL; Massachusetts Institute of Technology, Cambridge, MA;

Metropolitan Government of Nashville and Davidson County, Nashville, TN; Moksh Community Arts Inc., Missouri City, TX; New Hampshire Mime Company, Portsmouth, NH; Parkinson's Foundation, Inc., New York, NY; Philharmonic Society of Orange County, Irvine, CA; University Circle Inc., Cleveland, OH; University Settlement Society of New York-The Creative Center, New York, NY; Vermilionville Living History Museum Foundation, Inc., Lafayette, LA; Volunteer Lawyers for the Arts, Inc., New York, NY; VSA Vermont, Inc., Winooski, VT; and Wideman-Davis Dance of New York, New York, NY.