

### § 35.37

(1) DOL has advised the recipient of its failure to comply with the Act or with this part and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed since DOL sent a written report of the circumstances and grounds of the action to the committees of Congress having jurisdiction over the program or activity involved.

(d) *Deferral.* DOL may defer granting new Federal financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New Federal financial assistance from DOL includes all assistance for which DOL requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from DOL does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the initiation of a hearing under paragraph (a)(1) of this section.

(2) DOL may not defer a grant until the recipient has received notice of an opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within the 60-day period or the recipient and DOL have mutually agreed to extend the time for beginning the hearing. If the hearing does not result in a finding against the recipient, the deferral may not continue for more than 30 days after the close of the hearing.

### § 35.37 Hearings, decisions, and post-termination proceedings.

Certain DOL procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOL enforcement of these regulations. They are found at 29 CFR 31.9 through 31.11.

### § 35.38 Procedure for disbursement of funds to an alternate recipient.

(a) If funds are withheld from a recipient under this part, the Secretary may disburse the funds withheld directly to an alternate recipient.

(b) The Secretary will require any alternate recipient to demonstrate:

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(1) The ability to comply with the Act and this part; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

### § 35.39 Remedial action by recipient.

Where CRC finds discrimination on the basis of age in violation of this Act or this part, the recipient shall take any remedial action that CRC deems necessary to overcome the effects of the discrimination. In addition, if a recipient funds or otherwise exercises control over another recipient that has discriminated, both recipients may be required to take remedial action.

### § 35.40 Exhaustion of administrative remedies.

(a) A complainant may file a civil action under the Act following the exhaustion of administrative remedies. Administrative remedies are exhausted if:

(1) One hundred eighty days have elapsed since the complainant filed the complaint with CRC, and CRC has made no finding with regard to the complaint; or

(2) CRC issues any finding in favor of the recipient.

(b) If CRC fails to make a finding within 180 days, or issues a finding in favor of the recipient, CRC will promptly:

(1) Notify the complainant;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant who prevails in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint filed with the court;

(iii) Before commencing the action, the complainant must give 30 days notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice required by paragraph (b)(3)(iii) of this section must state the

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alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event that the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation

of the Act by the same recipient is the subject of a pending action in any court of the United States.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL

Program	Statute	Section and age distinction	Regulation
<b>Employment and Training Administration</b>			
1. Senior Community Service Employment Program (SCSEP).	Title V, Older Americans Act Amendments of 2000, Pub. L. 106-501, 42 U.S.C.3056, 3056N.	Sec. 516(2) defines the term "eligible individuals" to mean "an individual who is 55 years old or older, who has a low income * * *, except that, * * *, any such individual who is 60 years of older shall have priority * * *."	20 CFR part 641.
2. Job Corps .....	Title I, Subtitle C, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. 2881-2901.	Sec. 144 of WIA (29 U.S.C. 2884) establishes eligibility criteria for the Job Corps program. These criteria require an enrollee to "be—(1) not less than age 16 and not more than age 21 on the date of enrollment, except that— (A) not more than 20 percent of the individuals enrolled in the Job Corps may be not less than age 22 and not more than age 24 on the date of enrollment; and (B) either such maximum age limitation may be waived by the Secretary, * * * in the case of an individual with a disability."	20 CFR 670.400.
3. Indian and Native American Supplemental Youth Services.	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. 2911.	Sec. 166(d)(2)(A)(ii) of WIA (29 U.S.C. 2911(d)(2)(A)(ii)) states that funds made available under the program shall be used for "supplemental services for Indian or Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii." Sec. 101(13) of WIA (29 U.S.C. 2801(13)) defines an eligible youth as an individual who "is not less than age 14 and not more than age 21 * * *."	20 CFR 668.430.
4. Migrant and Seasonal Farmworker (MSFW) Youth Program.	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. 2912.	Sec. 167 of WIA (29 U.S.C. 2912) outlines the MSFW program. WIA Sec. 127(b)(1)(A)(iii) authorizes the MSFW Youth Program. That provision states that, "the Secretary shall make available 4 percent of such portion to provide youth activities under sec. 167." Sec. 101(13) of WIA (29 U.S.C. 2801(13)) defines an eligible youth as an individual who "is not less than age 14 and not more than age 21; * * *."	20 CFR 669.670.

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Program	Statute	Section and age distinction	Regulation
5. Responsible Reintegration of Young Offenders (Youth Offender Demonstration Project).	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. 2916; Departments Of Labor, Health And Human Services, And Education, And Related Agencies Appropriation Bill, 2003.	<p>(a) Sec. 171(b)(1) of WIA (29 U.S.C. 2916(b)(1)) states that the "Secretary shall, through grants or contracts, carry out demonstration and pilot projects for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of specialized methods, in addressing employment and training needs. Such projects shall include the provision of direct services to individuals to enhance employment opportunities and an evaluation component * * *." The Responsible Reintegration of Young Offenders program was established in FY 2001 by DOL, in collaboration with the Departments of Health and Human Services and Justice, pursuant to this authority.</p> <p>(b) Senate Report 107-84 on bill S. 1536 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation for FY 2002) noted that the Responsible Reintegration of Young Offenders initiative would "link offenders under age 35 with essential services that can help make the difference in their choices in the future * * *" (p. 25). DOL has determined, based upon the reentry needs of states and local communities, to provide services to a 14-24 year-old subset within this age limit. See 66 FR 30754, 30755 (June 7, 2001).</p>	20 CFR 667.220.
6. WIA Youth Activities .....	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. § 2854.	WIA Sec. 129 (29 U.S.C. 2854) provides the standards for WIA-financially assisted services to eligible youth. Eligible youth is defined in Sec. 101(13) as an individual who "is not less than age 14 and not more than age 21; * * *".	20 CFR 664.200.
7. Work Opportunity Tax Credits (WOTCs).	Small Business Job Protection Act of 1996, Pub. L. 104-188, 26 U.S.C. 51.	WOTC is intended to assist individuals from groups with consistently high unemployment rates by providing tax credits to their employers. Sec. 1201(b) of the Act (26 U.S.C. 51(d)) defines the targeted groups, including high-risk youth (26 U.S.C. 51(d)(1)(D)), qualified summer youth employee (26 U.S.C. 51(d)(1)(F)), and qualified food stamp recipient (26 U.S.C. 51(d)(1)(G)). The definitions of "high-risk youth" and "qualified food stamp recipient" include a requirement that the individual have "attained age 18 but not age 25 on the hiring date." 26 U.S.C. 51(d)(5)(A)(i), 51(d)(8)(A)(i). The definition of "qualified summer youth employee" includes a requirement that the individual have "attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved)." 26 U.S.C. 51(d)(2)(7)(A)(ii).	None.

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Program	Statute	Section and age distinction	Regulation
8. Youth Opportunity Grants.	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105-220, 29 U.S.C. 2914.	Sec. 169 provides that "the Secretary shall make grants to eligible local boards and eligible entities * * * to provide activities * * * for youth to increase the long-term employment of youth who live in empowerment zones, enterprise communities, and high poverty areas and who seek assistance." It defines "youth" as "an individual who is not less than age 14 and not more than age 21."	20 CFR 664.820.
9. Youth Apprenticeship Program.	29 U.S.C. 50 .....	Sec. 1 of the National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor to promote the labor standards necessary to safeguard the welfare of apprentices, encourage contracts of apprenticeship, and bring employers and labor together to form apprenticeships. An apprentice is defined in 29 CFR 29.2 of the Act's implementing regulations as "a worker at least 16 years of age, * * *, who is employed to learn a skilled trade * * * under standards of apprenticeship * * *". The regulations also require that the "eligible starting age" of an apprenticeship program be "not less than 16 years."	29 CFR 29.2, 29.5(b)(10).
10. Trade Adjustment Assistance.	Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210), 19 U.S.C. 2318.	Sec. 246 of the Act requires the Secretary of Labor to establish a demonstration project for alternative trade adjustment assistance (ATAA) for workers age 50 or older. Under this demonstration project, workers petitioning for certification under the Trade Adjustment Assistance (TAA) program may request certification under the ATAA program as well. Certification will be granted if a number of conditions are met, including that a significant number of workers in the affected firm are 50 or over. Once the worker group is certified, individual workers may choose the program they prefer. Additional qualifications for individual workers include an age at least 50.	20 CFR part 617; see also TAA Training and Employment Guidance Letter, 67 FR 69029 (Nov. 14, 2002).

Program	Statute	Section and age distinction	Regulation
<b>Employment Standards Administration</b>			
11. Defense Base .....	Defense Base Act, Pub. L. 77-208, Act of Aug. 16, 1941, ch. 357, 55 Stat. 623, 42 U.S.C. 1651-1654.	The Defense Base Act (DBA) extends the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950, "except as modified" in the DBA to certain persons employed at military bases outside the continental United States. DBA sec. 2(b), 42 U.S.C. 1652(b), provides that compensation for disability or death to aliens and non-nationals of the United States who are not residents of the United States or Canada under the Defense Base Act is in the same amount as residents, "except that dependents in any foreign country shall be limited to surviving wife and child or children." The DBA does not modify the LHWCA's definition of a child and the latter is defined as a person who is under 18 years of age, or who though 18 years of age or over, is wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or is a student.	20 CFR part 702.
12. Energy Employees Occupational Illness Compensation Program.	Energy Employees Occupational Illness Compensation Program Act, Pub. L. 106-398, Title XXXVI, October 30, 2000, 114 Stat. 1654 42 U.S.C. 7384 <i>et seq.</i>	(a) The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides compensation and medical benefits to nuclear weapons industry employees or their eligible survivors who have covered illnesses related to exposure to beryllium, cancers related to exposure to radiation, and chronic silicosis. Some uranium employees or their eligible survivors are also eligible for compensation under the Act. Sec. 3628(e) of EEOICPA, 42 U.S.C. 7384s(e)(1)(F)(ii), as amended by Sec. 3151 of Pub. L. 107-107, the National Defense Authorization Act for Fiscal Year 2002, relating to claims for radiogenic cancer, beryllium illnesses, or silicosis, provides that notwithstanding other provisions pertaining to payments in the case of deceased persons, if there is a surviving spouse and "at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment."  (b) Sec. 3630(e) of EEOICPA, 42 U.S.C. 7384u(e)(1)(F)(ii), as amended by Sec. 3151 of Pub. L. 107-107, the National Defense Authorization Act for Fiscal Year 2002, relating to claims by uranium employees contains a provision identical to that described above in Sec. 3628(e).	20 CFR 30.5(ee).

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Program	Statute	Section and age distinction	Regulation
13. Federal Employees' Compensation.	Federal Employees' Compensation Act, Act of Sept. 7, 1916, ch. 458, 39 Stat. 742 5 U.S.C. 8101-8151.	<p>(a) Sec. 8101(8), 5 U.S.C. 8108(8), defines "brother" and "sister" as meaning "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support."</p> <p>(b) Sec. 8101(9), 5 U.S.C. 8108(9), defines "child" as "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children."</p> <p>(c) Sec. 8101(10), 5 U.S.C. 8108(10), defines "grandchild" as "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support."</p> <p>(d) Sec. 8101(17), 5 U.S.C. 8108(17), defines "student" as "an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training".</p> <p>(e) Sec. 8109, 5 U.S.C. 8109, sets forth the order of precedence for payments of scheduled awards unpaid at the time of the employee's death from a cause other than the employment-related injury. It establishes the order as, "if no child, to the widow or widower, if there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children, [and] if there is no widow or widower, to the child or children."</p> <p>(f) Sec. 8110(a), 5 U.S.C. 8110(a)(3), defines "dependent" for purposes of determining eligibility for augmented compensation for dependents as including "an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is (A) under 18 years of age; or (B) over 18 years of age and incapable of self-support because of physical or mental disability." Notwithstanding paragraph (3), compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 * * * at the time he reaches 18 years of age for so long as he continues to be a student or until he marries."</p>	20 CFR 10.405, 10.410, 10.413-417, 10.535-.537, 25.101 and 25.202.

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		<p>(g) Sec. 8113(a), 5 U.S.C. 8113(a), permits the Secretary, after the time the wage-earning capacity of the individual would probably have increased but for the injury, to recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity, "if an individual (a) was a minor or employed in a learner's capacity at the time of injury and (b) was not physically or mentally handicapped before the injury."</p> <p>(h) Sec. 8115(a)(4), 5 U.S.C. 8115(a)(4), states that the age of an employee is one factor that shall be used in determining his wage-earning capacity for purposes of eligibility for partial disability compensation when the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or the employee has no actual earnings.</p> <p>(i) Sec. 8122(d)(1), 5 U.S.C. 8122(d)(1), provides that the time limitations for making a claim under FECA do not begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed.</p> <p>(j) Sec. 8133(a), 5 U.S.C. 8133(a), provides for compensation if death results from an injury sustained in the performance of duty and makes such compensation payable in accordance with a schedule that makes numerous references to children and grandchildren.</p> <p>(k) Sec. 8133(b)(1), 5 U.S.C. 8133(b)(1), provides that the compensation payable for death under subsection (a) terminates for a widow or widower if they die or remarry before reaching age 55.</p> <p>(l) Sec. 8133(b)(2), 5 U.S.C. 8133(b)(2), provides that the compensation payable for death under subsection (a) terminates for a child, a brother, a sister, or a grandchild when they die, marry, or become 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support but such compensation that would otherwise end because they reached 18 years of age shall continue if they are a student at the time they reach 18 years of age for as long as they continue to be a student or until they marry.</p> <p>(m) Sec. 8135(b), 5 U.S.C. 8135(b), provides that if a widow or widower entitled to death benefits remarries before reaching age 55, they shall be paid a lump sum equal to twenty-four times the monthly compensation to which they were entitled immediately before the remarriage.</p> <p>(n) Sec. 8141(a), 5 U.S.C. 8141(a), Civil Air Patrol Cadets under 18 years of age are not covered by FECA.</p>	

Program	Statute	Section and age distinction	Regulation
14. Longshore and Harbor Workers' Compensation.	Longshore and Harbor Workers' Compensation Act, Act of March 4, 1927, ch. 509, 44 Stat. 1424 33 U.S.C. 901-950.	<p>(o) Sec. 8141(b)(2), 5 U.S.C. 8141(b)(2), volunteer civilian members of the Civil Air Patrol, other than Civil Air Patrol Cadets under 18 years of age, are entitled to death benefits under sec. 8133 but only receive certain specified percentages of those benefits with no additional payments for a child or children in certain circumstances.</p> <p>(a) The Longshore and Harbor Workers' Compensation Act (LHWCA) provides workers' compensation for maritime employees. Sec. 2(14), 33 U.S.C. 902(14), defines a child and provides that a child, grandchild, brother or sister to include only a person who is under 18 years of age, or who though 18 years of age or over, is wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or is a student.</p> <p>(b) Sec. 2(18), 33 U.S.C. 902(18), defines a student as a person regularly pursuing a full-time course of study or training at certain specified institutions but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child is deemed not a student during a period of service in the Armed Forces of the United States. A child is not deemed to have ceased to be a student during any interim between school years if certain conditions are met.</p> <p>(c) Sec. 8(d)(1), 33 U.S.C. 908(d)(1), provides a scheme of distribution for payment of unpaid scheduled permanent partial disability benefits when an employee who is receiving such benefits dies from causes other than the injury. The distribution contains numerous references to child or children.</p> <p>(d) Sec. 9(b)-(d), 33 U.S.C. 909(b)-(d), provide for the payment of death benefits and the amount of such payments varies in part according to whether the deceased employee has a child or children.</p> <p>(e) Sec. 9(g), 33 U.S.C. 909(g), provides that compensation for aliens who are not residents (or about to become residents) of the United States or Canada is the same as for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported.</p>	20 CFR 702.142(a) and 702.222(a).

Program	Statute	Section and age distinction	Regulation
15. War Hazards Compensation.	War Hazards Compensation Act, Act of Dec. 2, 1942, ch. 668, Title I, 56 Stat. 1028 42 U.S.C. 1701-1717.	<p>(f) Sec. 10(e), 33 U.S.C. 910(e), provides that in determining the average weekly wages of an employee who is injured when a minor, the fact can be considered that under normal conditions his wages should be expected to increase during the period of disability.</p> <p>(g) Sec. 11, 33 U.S.C. 911, permits the district director to require the appointment of a guardian or other representative for a minor or any person who is mentally incompetent to receive compensation payable to the minor or incompetent and to exercise the powers granted to or to perform the duties required of them under the LHWCA.</p> <p>(h) Sec. 13(c), 33 U.S.C. 913(c), establishes the time requirement for filing a claim. The usual one year time limit is not applicable if the person entitled to compensation is mentally incompetent or a minor and such person has no guardian or other authorized representative. This freeze ends for a minor when a guardian is appointed or when he becomes of age.</p> <p>The War Hazards Compensation Act provides that certain provisions of the FECA and the LHWCA apply to certain persons employed by government contractors outside the continental United States who sustain an injury proximately caused by a war risk hazard. Sec. 101(c), 42 U.S.C. 1701(c), provides that compensation for disability or death to aliens and non-nationals of the United States who are not residents of the United States or Canada under the Act is in the same amount as residents, "except that dependents in any foreign country shall be limited to surviving wife or husband and child or children."</p>	20 CFR 61.203.
16. Child Labor Restrictions	Walsh-Healey Public Contracts Act, 41 U.S.C. 35 <i>et seq.</i> ,	The Act contains child labor restrictions for government manufacturing and supply contracts.	41 CFR part 50-201.
17. Child Labor Restrictions	Fair Labor Standards Act, 29 U.S.C. 201 <i>et seq.</i> ,	The Act contains child labor restrictions applicable to almost all employers receiving Federal financial assistance.	29 CFR part 570.
18. Black Lung Benefits .....	Black Lung Benefits Act, 30 U.S.C. 901-945.	<p>(a) 30 U.S.C. 902(a), BLBA definition of "dependent": refers to sec. 902(g), definition of "child".</p> <p>(b) 30 U.S.C. 902(g), BLBA definition of "child": defines a child or step-child as an individual who is under 18 years of age; defines a child who is a "student" by cross-reference to 42 U.S.C. 402(d)(7) (age 19) and 5 U.S.C. 8101(17) (age 23); and defines a disabled child as one whose disability began before the age specified in 42 U.S.C. 402(d) (age 22). 30 U.S.C. 922(a)(5)(1)(A), BLBA criteria for entitlement for a minor's "brother" using same criteria applicable to "child".</p>	20 CFR part 725, subpart B.

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19. Black Lung Benefits .....	Black Lung Benefits Act, 30 U.S.C. 901-945.	This sec. defines who may file a benefits claim. Persons aged 18 or older may file claims on their own behalf, while persons under age 18 generally must rely on an authorized individual to file the claim (with a limited exception for certain persons between 16 and 18 years of age).	20 CFR 725.301.

## PART 36—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52881, Aug. 30, 2000, unless otherwise noted.

### Subpart A—Introduction

#### § 36.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or