

§ 86.58

therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex

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is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title

IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80-6 through 80-11 and 45 CFR Part 81.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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Department of Health and Human Services

§ 87.1

APPENDIX A TO PART 86—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

NOTE: For the text of these guidelines, see 45 CFR Part 80, Appendix B.

[44 FR 17168, Mar. 21, 1979]

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.

87.1 Discretionary grants

87.2 Formula and block grants

AUTHORITY: 5 U.S.C. 301.

SOURCE: 69 FR 42593, July 16, 2004, unless otherwise noted.

§ 87.1 Discretionary grants.

(a) This section is not applicable to the programs governed by the Charitable Choice regulations found at 42 CFR Part 54a.

(b) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any State or local government and other intermediate organizations receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by discretionary grants under which recipients are selected through a competitive process. As used in this section, the term "recipient" means an organization receiving financial assistance from an HHS awarding agency to carry out a project or program and includes the term "grantee" as used in 45 CFR Parts 74, 92, and 96.

(c) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts

such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(d) A religious organization that participates in the Department-funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the Department without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of Department-funded activities.

(e) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any restrictions on the use of grant funds