

the "Rules and Regulations" section of this **Federal Register**.

Dated: October 18, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 80, 84, 86, 90, and 91

RIN 0991-AB10

Office for Civil Rights; Amending the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, Sex, and Age to Conform to the Civil Rights Restoration Act of 1987

ACTION: Proposed rule.

SUMMARY: The Secretary proposes to amend the Department of Health and Human Services regulations implementing Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975 to conform with certain statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRRA). The principal proposed conforming change is to amend the regulations to add definitions of "program or activity" or "program" that correspond to the statutory definitions enacted under the CRRRA.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 27, 2000.

ADDRESSES: Mail written comments or deliver them to the following address: Office for Civil Rights, Department of Health and Human Services, 200 Independence Avenue, SW., Room 509-F, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Ellis, (202) 619-0403; Kathleen O'Brien, (202) 619-2829; TDD 1-800-537-7697.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (Department or HHS) proposes to amend its civil rights regulations to conform to certain provisions of the Civil Rights Restoration Act of 1987 (Pub. L. 100-259) (CRRRA), regarding the scope of coverage under civil rights statutes administered by the Department. These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* (Title

VI), Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.* (Title IX), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* (Age Discrimination Act). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance; section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance.

The principal proposed conforming change is to amend each of these regulations to add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of recipients, beneficiaries, and other interested parties about the scope of civil rights coverage.

The Department's civil rights regulations, when originally issued and implemented, were interpreted by the Department to mean that acceptance of Federal assistance by an entity resulted in broad institutional coverage. In *Grove City College v. Bell*, 465 U.S. 555, 571-72 (1984) (*Grove City College*), the Supreme Court held, in a Title IX case, that the provision of Federal student financial assistance to a college resulted in Federal jurisdiction to ensure Title IX compliance in the specific program receiving the assistance, *i.e.*, the student financial aid office, but that the Federal student financial assistance would not provide jurisdiction over the entire institution. Following the Supreme Court's decision in *Grove City College*, the Department changed its interpretation, but not the language, of the governing regulations to be consistent with the Court's restrictive, "program specific" definition of "program or activity" or "program". Since Title IX was patterned after Title VI, *Grove City College* significantly narrowed the coverage of Title VI and two other statutes based on it: The Age Discrimination Act and Section 504. *See* S. Rep. No. 100-64, at 2-3, 11-16 (1987).

Then, in 1988, the CRRRA was enacted to "restore the prior consistent and long-

standing executive branch interpretation and broad, institution-wide application of those laws as previously administered." 20 U.S.C. 1687 note 1. Congress enacted the CRRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, the Department reinstated its broad interpretation to be consistent with the CRRRA, again without changing the language of the regulations. It was and remains the Department's consistent interpretation that—with regard to the differences between the interpretation of the regulations given by the Supreme Court in *Grove City College* and the language of the CRRRA—the CRRRA, which took effect upon enactment, superseded the *Grove City College* decision and, therefore, the regulations must be read in conformity with the CRRRA in all their applications.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRRA, that the statutory definition of "program or activity" or "program" would take effect immediately, by its own force, without the need for Federal agencies to amend their existing regulations. S. Rep. No. 100-64, at 32. The legislative history also evidences congressional concern about the Department's immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRRA definition of "program or activity", and includes examples demonstrating why the CRRRA was "urgently" needed. *See* S. Rep. No. 100-64, at 11-16.

The proposed regulatory change described in the previous paragraph would address an issue recently raised by the Third Circuit Court of Appeals in *Cureton v. NCAA*, 198 F.3d 107, 115-16 (1999) (*Cureton*). That court determined that, because the Department did not amend its Title VI regulation after the enactment of the CRRRA, application of the Department's Title VI regulation to disparate impact discrimination claims is "program specific" (*i.e.*, limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the Federal funds). In the court's view, the regulations should clarify the application of the broad institutional coverage to disparate impact claims, because the disparate impact analysis appears in regulation, and not in a statute. We disagree with the *Cureton* decision for the reasons described in

this preamble. Nevertheless, the proposed regulatory changes would explicitly incorporate definitions of “program or activity” or “program” that correspond to those enacted under the CRRA and thereby remove any doubt that the regulations apply institution-wide to both disparate impact discrimination and disparate treatment discrimination. (“Disparate treatment” refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. Disparate treatment is generally barred by the civil rights statutes and regulations. “Disparate impact” refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their necessity.)

The statutory definition, which is being incorporated into the regulations, addresses four broad categories of recipients: (1) State or local governmental entities; (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems; (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education, health care, housing, social services, or parks and recreation; and (4) Entities that are established by a combination of two or more of the first three types of entities.

Under the first part of the definition, if State and local governmental entities receive financial assistance from the Department, the “program or activity” or “program” in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. For example, if the Department provides financial assistance to a State health agency, all of the agency’s operations are subject to the nondiscrimination requirements of the regulations. In addition, “program or activity” or “program” includes all of the operations of the entity of a State or local government that distributes the Federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended.

Under the second part of the definition of “program or activity” or

“program”, if colleges, universities, other postsecondary institutions, public systems of higher education, local educational agencies, systems of vocational education, or other school systems receive financial assistance from the Department, all of their operations are subject to the nondiscrimination requirements of the regulations. For example, if a college or university receives Federal financial assistance from the Department to support medical research, all of the operations of the college or university are covered, not solely the operations of the component performing the medical research.

Under the third part of the definition, in the case of private entities not already listed under the second part of the definition, if the Federally assisted entity or organization is principally engaged in the business of education, health care, housing, social services, or parks and recreation, then the entire corporation, partnership, or other private organization or sole proprietorship is the covered “program or activity” or “program”. For example, if a private hospital receives financial assistance from the Department, it will be covered on an institution-wide basis under this portion of the definition of “program or activity” or “program” because it is an entity principally engaged in the business of providing health care. All of its operations are covered by the nondiscrimination requirements of the regulations.

Also under the third part of the definition, if a private entity is not principally engaged in the business of education, health care, housing, social services, or parks and recreation, and the Department extends financial assistance to the private entity “as a whole”, all of the private entity’s operations at all of its locations would be covered. If the Department were to extend general assistance, that is, assistance that is not designated for a particular purpose, to this type of corporation or other private entity, that would be considered financial assistance to the private entity “as a whole”. In other instances in which the Department extends financial assistance to this type of entity, the coverage would be limited to the entire plant or other comparable geographically separate facility to which assistance is extended.

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition,

then all of the operations of that new entity are covered.

The proposed regulations also would modify or delete some existing sections of the Department regulations that have become superfluous following the CRRA enactment, to conform with the CRRA definitions of “program or activity” or “program.” This is consistent with the approach taken by other Federal agencies in the Title IX common rule NPRM, for example, in which it was noted that regulatory language in the Department of Education’s Title IX regulations made superfluous by the enactment of the CRRA was omitted in that proposed rule (64 FR 58568, 58571). The Title IX, Title VI, and section 504 regulations of the Department of Education and HHS are substantially similar because both were derived from the original Department of Health, Education and Welfare regulation.

The Department’s Title IX regulations, promulgated in 1975, defined “recipient” as an entity “to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance.” 45 CFR 86.2(h). At that time, the words “or benefits from” were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal financial assistance—not just the particular programs receiving financial assistance—are covered by Title IX’s nondiscrimination requirements. As previously discussed, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College*, which held that Federal student financial aid established Title IX jurisdiction only over the financial aid program, not the entire institution. However, Congress’ 1988 enactment of the CRRA counteracted this decision by defining “program or activity” and “program” to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words “or benefits from” are no longer necessary as a regulatory matter. For that reason, we propose to delete the words “or benefits from” and similar phrases from the Title IX regulation. We also propose to delete similar language from the Department’s Section 504 and Age Discrimination Act regulations. These deletions do not affect the reach of Title IX, Section 504, or the Age Discrimination Act.

The existing Title VI regulation of the Department of Health and Human Services, promulgated in 1964 by the Department of Health, Education, and Welfare in 29 FR 16298 and 29 FR

16988 and in 1965 in 30 FR 16988, include an assurance requirement for institutions in § 80.4(d)(2) that has created confusion with regard to the scope of “program or activity” and “program” under Title VI. One example is the previously referenced decision in *Cureton*. The current provision states, in part: The assurance “* * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution’s practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought * * *”. 45 CFR 80.4(d)(2). This NPRM proposes to delete that portion of the assurance to avoid any further confusion. As previously stated, it was appropriate to apply the CRRA statutory definition of “program or activity” to the regulations. For the same reasons, portions of the illustrations in § 80.5(c) and (e) would be deleted, since they could create similar confusion. Specifically, current § 80.5(c) states that, with regard to prohibited discrimination in university graduate research, training, demonstration, or other grants, “the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.” Similarly, current § 80.5(e) states: “In other construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.” These proposed deletions would not affect the reach of Title VI.

In addition, we are proposing conforming changes that delete references to “program” or “program or activity” in the existing regulations that refer to Federal financial assistance or to specific activities of the recipient, or that conform the meaning to the broad definition in the CRRA and eliminate potential confusion in the use of these terms, and continue the longstanding Department interpretation of the statutes and regulations. These changes will ensure that there is no confusion as to the use of these terms in the regulations. For example, in the Title VI regulation § 80.2 refers to “Federal assisted programs and activities listed in Appendix A to this part.” Appendix A is a list of Federal financial assistance triggering coverage under the civil rights

laws. “Federal assisted programs and activities” as used in § 80.2 clearly refers to Federal programs of assistance. We propose to delete “assisted programs and activities” in this subsection and substitute “financial assistance.” We are proposing comparable conforming changes in our Title VI, Section 504, Title IX and Age Discrimination Act regulations, including both the government-wide coordinating Age Discrimination Act regulation and the HHS-specific Age Discrimination Act regulation. For example, in some instances, we have proposed to delete “program” or “program or activity” and substitute “Federal financial assistance,” or “aids, benefits or services.” These substitutions are not intended to change the scope or substance of the regulations. They are intended only to remove any confusion that might result from the adoption of the proposed definitions of “program or activity” or “program”. In other instances, we have proposed to change “programs and activities” to “programs or activities” to conform the regulation to the phrase used in the CRRA—when it is used in the broad manner defined in the CRRA. We have not proposed to modify the term “activity” when it appears separately from the phrase “program or activity” and is used in a manner unrelated to the CRRA phrase “program or activity.” These proposed changes are not intended to change the scope or substance of the regulations, but to remove any confusion that might result from the proposed definitions.

It is important to note that the proposed changes would not in any way alter the requirement of the CRRA that a proposed or effectuated fund termination be limited to the particular program or programs “or part thereof” that discriminates or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20 (“The [CRRA] defines ‘program’ in the same manner as ‘program or activity,’ and leaves intact the ‘or part thereof’ pinpointing language.”).

We propose to replace the current definition of “program” in the Title VI regulation in 45 CFR 80.13 with the proposed definition of “program or activity” and “program”. We propose to add the definition of “program or activity” and “program” to the Title IX regulation in 45 CFR 86.2. We propose to add the definition of “program or activity” to the Section 504 regulation in 45 CFR 84.3, the government-wide Age Discrimination Act regulation in 45 CFR 90.4, and the HHS-specific Age Discrimination Act regulation in 45 CFR 91.4. Because, as previously explained,

the proposed changes merely incorporate statutory language and do not alter the Department’s consistent position that the regulations must be read in conformity with the CRRA, the Department views these changes as technical in nature. However, the Department is inviting public comment on the proposed changes, consistent with its policy of involving interested members of the public in its rulemaking process. Conforming changes to the nonregulatory guidance in Appendix B of part 80 and Appendix A of part 84 will be published in the **Federal Register** in a separate notice. Nothing in these proposed changes affects coverage under the Federal employment nondiscrimination statutes, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

Collection of Information Requirements

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995.

Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects of \$100 million or more annually. We have determined that there probably will be no cost impacts because this regulatory action implements statutory amendments and longstanding Department policy. Recently the Third Circuit Court of Appeals interpreted existing regulations inconsistently with the language of the CRRA and our existing practices. The Department disagrees with that decision. However, these proposed regulations would clarify the Department’s policy and practice in light of that decision, and would do that only a short time after the court decision, thereby ensuring continuity in that policy and practice and avoiding changes in the behavior of recipients within the Third Circuit that could occur if Federal civil rights jurisdiction were changed. Therefore, it is possible that there will be no costs

associated with the proposed regulations. Since we believe that this proposed rule would have no significant effect on program expenditures, we do not consider this to be a major rule. Accordingly, we have not prepared an RIA.

The Unfunded Mandates Reform Act of 1995 also requires that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in expenditures, in any given year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. We are not preparing an analysis under this Act because this rule is not a major rule as defined at 5 U.S.C. 804(2), nor will it have a significant economic impact on the operations of a substantial number of small providers of health and human services. The proposed rule implements statutory amendments and longstanding Department policy.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

45 CFR Part 80

Civil rights, Discrimination.

45 CFR Part 84

Blind, Civil rights, Discrimination, Handicapped, Individuals with Disabilities.

45 CFR Part 86

Civil rights, Sex discrimination.

45 CFR Parts 90 and 91

Aged, Civil rights, discrimination.

Dated: August 1, 2000.

Thomas E. Perez,

Director, Office for Civil Rights.

Dated: August 2, 2000.

Donna Shalala,

Secretary.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 80, 84, 86, 90, and 91 of title 45 of the Code of Federal Regulations as follows:

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.

§ 80.2 [Amended]

2. Section 80.2 is amended by removing the words “program for which” and adding, in their place, “program to which” and removing the words “assisted programs and activities” and adding, in their place, “financial assistance”.

§ 80.3 [Amended]

3. Section 80.3(d) is amended by removing the words “the benefits of a program”, and adding, in their place, the word “benefits”.

4. Section 80.4 is amended as follows—

A. Removing the words “to carry out a program” in the first sentence of paragraph (a)(1);

B. Removing the words “except a program” and adding, in their place, the words “except an application” in the first sentence of paragraph (a)(1);

C. Removing the words “for each program” and the words “in the program” in the fifth sentence of paragraph (a)(1);

D. Removing the words “State programs” and adding, in their place, the words “Federal financial assistance” in the heading of paragraph (b);

E. Removing the words “to carry out a program involving” and adding, in their place, the word “for” in paragraph (b); and

F. Revising paragraph (d)(2).
The revision of paragraph (d)(2) reads as follows:

§ 80.4 Assurances required.

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution’s practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Section 80.5 is amended as follows—

A. Removing the words “under the program” in paragraph (a).

B. Revising paragraph (c); and C. Removing the last sentence of paragraph (e).

The revision of paragraph (c) reads as follows:

§ 80.5 Illustrative application.

* * * * *

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

§ 80.6 [Amended]

6. Section 80.6(b) is amended by removing the words “of any program under” in the last sentence and adding, in their place, the word “in”.

§ 80.9 [Amended]

7. Section 80.9(e) is amended by removing the word “programs” in the first sentence and adding, in its place, the words “Federal statutes, authorities, or other means by which Federal financial assistance is extended”.

8. Section 80.13 is amended by removing the words “for any program,” and “under any such program” in paragraph (i); removing the words “for the purpose of carrying out a program” in paragraph (j); and revising paragraph (g) and revising the authority citation following the section to read as follows:

§ 80.13 Definitions.

* * * * *

(g) The term *program or activity* and the term *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (g)(2), or (g)(3) of this section; any part of which is extended Federal financial assistance.

* * * * *

(Secs. 602, 606, Civil Rights Act of 1964, (42 U.S.C. 2000d-1, 2000d-4a))

9. Appendix A to part 80 is amended by revising the heading of part 1 and the heading of part 2 to read as follows:

Appendix A to Part 80—Federal Financial Assistance to Which These Regulations Apply

Part 1—Assistance Other Than Continuing Assistance to States

* * * * *

Part 2—Continuing Assistance to States

* * * * *

10. The title of part 84 is revised to read as follows:

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

11. The authority citation for part 84 continues to read as follows:

Authority: 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd-2; 21 U.S.C. 1174.

§ 84.2 [Amended]

12. Section 84.2 is amended by removing the word “each” the second time it appears and adding, in its place, the word “the”; and by removing the words “or benefits from”.

13. Section 84.3 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), respectively; and adding a new paragraph (k) and adding an authority citation following this section to read as follows:

§ 84.3 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

* * * * *

(29 U.S.C. 794(b))

§ 84.4 [Amended]

14. Section 84.4 is amended by—

A. Removing the words “or benefits from” in paragraphs (a) and (b)(5);

B. Removing the words “programs or activities” whenever they appear in paragraph (b)(3), and adding, in their place, the words “aids, benefits, or services”;

C. Removing the words “or benefiting from” in paragraph (b)(6); and

D. In paragraph (c) removing the word “Programs” in the heading and adding, in its place, the words “Aids, benefits, or services”; removing the words “from the benefits of a program” and adding, in their place, the words “from aids, benefits, or services”, and removing the words “from a program” and adding, in their place, the words “from aids, benefits, or services”.

§§ 84.4, 84.6, 84.12, 84.32, 84.33, 84.36 [Amended]

15. Remove the word “program” and add, in its place, the words “program or activity” in the following sections:

A. Section 84.4(b)(1)(v);

B. Section 84.4(b)(4);

C. Section 84.6(a)(3), whenever it appears;

D. Section 84.12(a), (c) introductory text, and (c)(1);

E. Section 84.32;

F. Section 84.33(a); and

G. Section 84.36, in the first sentence.

§ 84.5 [Amended]

16. Section 84.5(a) is amended in the first sentence by removing the words “for a program or activity” and by removing the words “the program” and adding, in their place, the words “the program or activity”.

§ 84.8 [Amended]

17. Section 84.8(a) is amended by removing the words “programs and activities” in the second sentence and adding, in their place, the words “programs or activities”.

§ 84.11 [Amended]

18. Section 84.11 is amended by—

A. Removing the words “programs assisted” and adding, in their place, the words “programs or activities assisted” in paragraph (a)(2);

B. Removing the word “programs” and revising “apprenticeship” to read “apprenticeships” in the last sentence of paragraph (a)(4).

C. Removing the word “programs” and adding the words “those that are” before “social or recreational” in paragraph (b)(8).

Subpart C—Accessibility

19. The heading of Subpart C is amended by removing the word “PROGRAM”.

§ 84.22 [Amended]

20. Section 84.22 is amended in paragraph (a) by removing the words “Program accessibility” in the heading and adding, in their place, the word “Accessibility” and by removing the words “each program or activity to which this part applies so that the program or activity, when viewed in its entirety,” in the first sentence and adding in their place, the words “its program or activity so that when each part is viewed in its entirety, it”; in paragraph (b) by removing the words “offer programs and activities to” in the last sentence and adding, in their place, the word “serve”; and in paragraph (e)(3) by removing the words “program accessibility” and adding, in their place,

the words “full accessibility under paragraph (a)”.

§ 84.31 [Amended]

21. Section 84.31 is amended by removing the words “or benefit from” whenever they appear; and by removing the words “programs and activities” and adding, in their place, the words “programs or activities”.

§ 84.33 [Amended]

22. Section 84.33 is amended by—

A. Removing the words “individualized education program” and adding, in their place, the words “Individualized Education Program” in paragraph (b)(2);

B. Removing the words “in or refer such person to a program other than the one that it operates” and adding, in their place, the words “or refer such a person for aids, benefits, or services other than those that it operates or provides” in the first sentence of paragraph (b)(3);

C. Removing the words “in or refers such person to a program not operated” in the second sentence of paragraph (c)(1), and adding, in their place, the words “or refers such person for aids, benefits, or services not operated or provided”;

D. Removing the words “of the program” in the second sentence of paragraph (c)(1) and adding, in their place, the words “of the aids, benefits, or services”;

E. Removing the words “in or refers such person to a program not operated” in paragraph (c)(2), and adding, in their place, the words “or refers such person for aids, benefits, or services not operated or provided”;

F. Removing the words “from the program” in paragraph (c)(2), and adding, in their place, the words “from the aids, benefits, or services”;

G. Removing the words “in the program” in paragraph (c)(2), and adding, in their place, the words “in the aids, benefits, or services”;

H. Removing the words “If placement in a public or private residential program” and adding, in their place, the words “If a public or private residential placement” in paragraph (c)(3); and removing the words “the program”, and adding, in their place, the words “the placement”; and

I. Removing the words “such a program” in the last sentence of paragraph (c)(4), and adding, in their place, the words “a free appropriate public education”.

§ 84.35 [Amended]

23. Section 84.35(a) is amended by removing the words “program shall”

and adding, in their place, the words “program or activity shall” and by removing the word “a” before the word “regular” and by removing the word “program” before the word “and”.

§ 84.37 [Amended]

24. Section 84.37(c)(1) is amended by removing the words “programs and activities” in the first sentence and adding, in their place, the words “aids, benefits, or services”; and by removing the words “in these activities” in the last sentence.

§ 84.38 [Amended]

25. Section 84.38 is amended by—

A. Removing the word “programs” in the section heading;

B. Removing the words “operates a” and adding, in their place, the word “provides”;

C. Removing the words “program or activity or an” after the word “care” and adding, in their place, the word “or”;

D. Removing the words “program or activity” after the word “education”;

E. Removing the words “from the program or activity”;

F. Revising the word “aid” to read “aids”; and

G. Removing the words “under the program or activity”.

§ 84.39 [Amended]

26. Section 84.39 is amended by—

A. Removing the word “programs” in the section heading;

B. Removing the words “operates a” and adding, in their place, the word “provides” in paragraph (a);

C. Removing the word “program” after the word “education” in paragraph (a);

D. Removing the words “from such program” in paragraph (a);

E. Removing the words “the recipient’s program” in paragraph (a), and adding, in their place, the words “that recipient’s program or activity”; and

F. Removing the words “operates special education programs shall operate such programs” in paragraph (c), and adding, in their place, the words “provides special education shall do so”.

§ 84.41 [Amended]

27. Section 84.41 is amended by removing the words “programs and activities” whenever they appear in the section and adding, in their place, the words “programs or activities”; and by removing the words “or benefit from” whenever they appear in the section.

§ 84.43 [Amended]

28. Section 84.43 is amended by—

A. Removing the words “program or activity” in paragraph (a) and adding, in

their place, the words “aids, benefits, or services”; and

B. Removing the words “programs and activities” in paragraph (d), and adding, in their place, the words “program or activity”.

§ 84.44 [Amended]

29. Section 84.44 is amended by—

A. Removing the words “program of” in the second sentence of paragraph (a);

B. Removing the words “in its program” in paragraph (c); and

C. Removing the words “under the education program or activity operated by the recipient” in paragraph (d)(1).

§ 84.47 [Amended]

30. Section 84.47 is amended by removing the words “programs and activities” in paragraph (a)(1), and adding, in their place, the words “aids, benefits, or services”.

§ 84.51 [Amended]

31. Section 84.51 is amended by removing the words “or benefit from” whenever they appear in the section; and by removing the word “and” before the word “activities” and adding, in its place, the word “or”.

§ 84.54 [Amended]

32. Section 84.54 is amended by removing the words “operates or supervises a program or activity” and adding, in their place, the words “provides aids, benefits, or services”.

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

34. The heading for part 86 is revised to read as set forth above.

35. Section 86.2 is amended by—

A. Redesignating paragraphs (h) through (r) as paragraphs (i) through (s), respectively;

B. Adding a new paragraph (h) and revising the authority citation following the section; and

C. Revising newly redesignated paragraph (i) to remove the words “or benefits from”.

New paragraph (h) reads as follows:

§ 86.2 Definitions

* * * * *

(h) *Program or activity* and *program* means all of the operations of—
(1)(i) A department, agency, special purpose district, or other

instrumentality of a State or of a local government; or

(ii) The entity of such a State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

* * * * *

(Secs. 901, 902, 908, Education Amendments of 1972, 20 U.S.C. 1681, 1682, 1687)

* * * * *

§ 86.4 [Amended]

36. Section 86.4 is amended by removing the word “each” and adding, in its place, the word “the” in the first sentence of paragraph (a).

§ 86.6 [Amended]

37. Section 86.6 is amended by removing the words “or benefits from” in paragraph (c).

§ 86.11 [Amended]

38. Section 86.11 is amended by removing the word “each” and adding, in its place, the word “the”; and by removing the words “or benefits from”.

39. The titles of Subparts D and E are amended by removing the word “and” and adding, in its place, the word “or”.

§ 86.31 [Amended]

40. Section 86.31 is amended by—

A. Removing the word “and” in the section heading, and adding, in its place, the word “or”;

B. Removing the words “or benefits from” in the first sentence of paragraph (a); and

C. Removing the words “*Programs not operated*” in the heading of paragraph (d), and adding, in their place, the words “*Aid, benefits, or services not provided*”.

§ 86.40 [Amended]

41. Section 86.40 is amended by removing the words “in the normal education program or activity” in paragraph (b)(2); and by removing the words “instructional program in the separate program” in paragraph (b)(3) and adding, in their place, the words “separate portion”.

42. Section 86.51 is amended by removing the words “or benefits from” in paragraph (a)(1).

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

43. The authority citation for part 90 is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*

§ 90.1 [Amended]

44. Section 90.1 is amended by removing the words “programs and activities” in the last sentence and adding, in their place, the words “programs or activities”.

§ 90.3 [Amended]

45. Section 90.3 is amended by removing the word “and” in the section heading and adding, in its place, the word “or”.

46. Section 90.4 is amended by adding in alphabetical order a new definition of “Program or activity” and adding an authority citation following the section to read as follows:

§ 90.4 How are the terms in these regulations defined?

* * * * *

Program or activity means all of the operations of—(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) of this definition; any part of which is extended Federal financial assistance.

* * * * *

(42 U.S.C. 6107)

§ 90.34 [Amended]

47. Section 90.34 is amended by removing the word “programs” and adding, in its place, the words “programs or activities” whenever they appear in the section.

§ 90.42 [Amended]

48. Section 90.42 is amended by removing the words “programs and activities” in the first sentence of paragraph (a) and adding, in their place, the words “programs or activities”.

§ 90.43 [Amended]

49. Section 90.43 is amended by removing the word “program” in the last sentence of paragraph (c)(4).

§ 90.47 [Amended]

50. Section 90.47 is amended by removing the word “Federal” in the first sentence of paragraph (c)(2).

§ 90.48 [Amended]

51. Section 90.48 is amended by removing the words “program or activity” in the last sentence and adding, in their place, the words “Federal financial assistance”.

§ 90.49 [Amended]

52. Section 90.49 is amended by removing the word “program” whenever it appears in paragraph (c)

and adding, in its place, the words “program or activity”.

PART 91—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM HHS

53. The heading for part 91 is revised to read as set forth above.

54. The authority citation for part 91 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

§ 91.1 [Amended]

55. Section 91.1 is amended by removing the words “programs and activities” in the last sentence and adding, in their place, the words “programs or activities”.

§ 91.2 [Amended]

56. Section 91.2 is amended by removing the words “programs and activities” in the last sentence and adding, in their place, the words “programs or activities”.

§ 91.3 [Amended]

57. Section 91.3 is amended by removing the word “programs” in the section heading and adding, in its place, the words “programs or activities”; and removing the words “or benefits from” in paragraph (a).

58. Section 91.4 is amended by adding in alphabetical order a new definition of “Program or activity” and adding an authority citation following the section to read as follows:

§ 91.4 Definition of terms used in these regulations

* * * * *

Program or activity means all of the operations of—

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) of this definition; any part of which is extended Federal financial assistance.

* * * * *

(Authority: 42 U.S.C. 6107)

§ 91.17 [Amended]

59. Section 91.17 is amended by removing the word “program” whenever it appears and adding, in its place, the words “program or activity”.

§ 91.18 [Amended]

60. Section 91.18 is amended by removing the word “program” and adding, in its place, the words “program or activity”.

§ 91.31 [Amended]

61. Section 91.31 is amended by removing the words “programs and activities” in the first sentence and adding, in their place, the words “programs or activities”.

§ 91.32 [Amended]

62. Section 91.32 is amended by removing the word “program” in paragraph (b).

§ 91.44 [Amended]

63. Section 91.44 is amended by removing the word “program” in paragraph (a)(2).

§ 91.46 [Amended]

64. Section 91.46 is amended by removing the words “program and activity” in the first sentence of paragraph (b) and adding, in their place, the words “program or activity”; and by removing the word “Federal” in the first sentence of paragraph (c)(2).

§ 91.49 [Amended]

65. Section 91.49 is amended by removing the words “program or activity” in paragraph (b)(2) and adding, in their place, the words “Federal financial assistance”.

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