

TABLE 1 TO § 75.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR part 100.
Discrimination on the basis of sex .....	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR part 106.
Discrimination on the basis of handicap .....	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age. ....	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i> ) ....	34 CFR part 110.

(b)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter “public institution”), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department’s grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each grantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department’s grant. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the

private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department’s grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A grantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 3. Section 75.684 is added to subpart E to read as follows:

**§ 75.684 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 4. Section 75.700 is revised to read as follows:

**§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.**

A grantee shall comply with § 75.500, applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 5. Section 75.741 is added to subpart F to read as follows:

**§ 75.741 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e-3 and 3474)

**PART 76—STATE-ADMINISTERED FORMULA GRANT PROGRAMS**

■ 6. The authority citation for part 76 continues to read as follows:

**Authority:** 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

■ 7. Section 76.500 is revised to read as follows:

**§ 76.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.**

(a) A State and a subgrantee shall comply with the following statutes and regulations:

TABLE 1 TO § 76.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR part 100.

TABLE 1 TO § 76.500(a)—Continued

Subject	Statute	Regulation
Discrimination on the basis of sex .....	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106.
Discrimination on the basis of handicap .....	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age .....	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i> ) ....	34 CFR part 110.

(b)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter “public institution”), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department’s grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each State or subgrantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom, as a material condition of the Department’s grant. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a

final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each State or subgrantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department’s grant, each State or subgrantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A State or subgrantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108. (Authority: 20 U.S.C. 1221e–3, 3474)

■ 8. Section 76.684 is added to subpart F to read as follows:

**§ 76.684 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 9. Section 76.700 is revised to read as follows:

**§ 76.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.**

A State and a subgrantee shall comply with § 76.500, the State plan, applicable statutes, regulations, and approved

applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 10. Section 76.784 is added to subpart I to read as follows:

**§ 76.784 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

**PART 106—NON DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

■ 11. The authority citation for part 106 continues to read as follows:

**Authority:** 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

■ 12. Section 106.12 is amended by adding paragraphs (c) and (d) to read as follows:

**§ 106.12 Educational institutions controlled by religious organizations.**

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(c) *Eligibility.* Any of the following in paragraphs (c)(1) through (6) of this section shall be sufficient to establish that an educational institution is controlled by a religious organization, as contemplated under paragraph (a) of this section, and is therefore eligible to assert a religious exemption to the extent application of this part would not be consistent with its religious tenets:

(1) That the educational institution is a school or department of divinity.

(2) That the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of the organization by which it claims to be controlled.

(3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines