

## § 86.60

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 Enforcement procedures.

For the purposes of implementing this part, the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and incorporated herein by ref-

## 45 CFR Subtitle A (10–1–22 Edition)

erence. These procedures may be found at 45 CFR 80.6 through 80.11 and 45 CFR part 81.

[85 FR 37244, June 19, 2020]

### SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION<sup>1</sup>

#### A

Access to Course Offerings [43, 55, 56, 57, 58]; 86.34  
Access to Schools Operated by LEA’s, [44]; 86.35  
Admissions, [5, 6, 30]; 86.15, 86.21  
Affirmative and remedial action, [16, 17, 24]; 86.3 (a), (b)  
Administratively separate units, [30]; 86.15(b), 86.2(o)  
Educational Institutions, [30], 86.15(d), 86.2(n)  
General, 86.21(a), 86.2(p),  
Prohibitions relating to marital and parental status, [32, 36]; 86.21(c)  
Professional schools, [30], 86.2(m)  
Public institutions of undergraduate higher education, 86.15(e)  
Recruitment, [34, 35]; 86.23  
Specific prohibitions, 86.21(b)  
Tests, [31]; 86.21(b)(2)  
Preference in admission, [35]; 86.22  
Advertising, 86.59  
Affirmative Action, see “Remedial and Affirmative Actions”  
Assistance to “outside” discriminatory organizations, [40, 53]; 86.31(b)(7), (c)  
Assurances, [18]; 86.4  
Duration of obligation, 86.4(b)  
Form, 86.4(c)  
Athletics, [69 to 78]; 86.41  
Adjustment period, [78]; 86.41(d)  
Contact sport defined, 86.41(d)  
Equal opportunity, [76, 77]; 86.41(d)  
Determining factors, 86.41(c) (i) to (x)  
Equipment, 86.41(c)  
Expenditures, 86.41(c)  
Facilities, 86.41(c)  
Travel, 86.41(c)  
Scholarships, [64, 65]; 86.37(d)  
General, [69, 70, 71, 72, 73, 74, 75]; 86.41(a)  
Separate teams, [75]; 86.41(b)

#### B

BFOQ, [96]; 86.61

#### C

Comparable facilities  
Housing, [42, 54]; 86.32  
Other, 86.33, 86.35(b)  
Compensation, [84, 87, 92]; 86.54  
Counseling  
Disproportionate classes, [45, 59]; 86.36(c)  
General, [45, 59]; 86.36(a)

<sup>1</sup>Preamble paragraph numbers are in brackets [ ].

## Dept. of Health and Human Services

Materials, [45, 59]; 86.36(b)  
Course Offerings  
Adjustment period, [55]; 86.34(a) (i)  
General, [7, 43]; 86.34  
Music classes, [43]; 86.34(f)  
Physical education, [43, 56, 58];  
Sex education, [43, 57]; 86.34(e)  
Coverage, [5]; 86.11 to 86.17  
Exemptions  
Curricular materials, [52]; 86.42(a)  
  
D  
Definitions, [14, 15]; 86.2(a) to (r)  
Designation of responsible employee, [20, 22];  
86.8(a), (b)  
Dissemination of policy, [21]; 86.9  
Distribution, 86.9(c)  
Notification of policy, [21]; 86.9(a)  
Publications, 86.9(b)  
Dress codes 86.31(b) (4)  
  
E  
Education Institutions  
Controlled by religious organizations, 86.12  
Application, [28, 29]; 86.12(a)  
Exemption, [26]; 86.12(b)  
Education Program and Activities  
Benefiting from Federal financial assistance, [10, 11]; 86.11  
General, [10, 11, 53]; 86.31(a)  
Programs not operated by recipient, [41, 54]; 86.31(c)  
Specific prohibitions, [38, 39, 40, 53]; 86.31(b)  
Effective Date, [3]  
Employee responsible for Title IX, see  
“Designation of Responsible Employee”  
Employment  
Advertising, 86.59  
Application, 86.51(b)  
Compensation, [84, 92]; 86.54  
Employment criteria, 86.52  
Fringe benefits, [88, 89]; 86.56  
General, [81, 82, 87]; 86.51  
Job Classification and Structure, 86.55  
Marital and Parental Status, 86.57  
Pregnancy, [85, 93]; 86.57(b)  
Pregnancy as Temporary Disability, [85, 93]; 86.57(c)  
Pregnancy Leave, [85, 93, 94]; 86.57(d)  
Pre-Employment Inquiry  
Recruitment, [83, 90, 91, 95]  
Sex as a BFOQ, [96]; 86.61  
Student Employment, [66]; 86.38  
Tenure, 86.51(b) (2)  
Exemptions, [5, 27, 28, 29, 30, 53]; 86.12(b),  
86.13, 86.14, 86.15(a), 86.15(d), 86.16  
  
F  
Federal Financial Assistance, 86.2(a)  
Financial Assistance to students, [46, 60, 61];  
86.37  
Athletic Scholarships, [46, 64, 65]; 86.37(d)  
Foreign institutions, study at [63]; 86.31(c)  
General, 86.37  
Non-need scholarships, [62]; 86.37(b)

## Pt. 86, Index

Pooling of sex-restrictive, [46, 61, 62];  
86.37(b)  
Sex-restrictive assistance through foreign  
or domestic wills [46, 61, 62]; 86.37(b)  
Foreign Scholarships, see “Financial assistance”  
86.37 and “Assistance to ‘outside’  
discriminatory organizations”, 86.31(c)  
Fraternities/Sororities  
Social, [53, 27, 28]; 86.14(a)  
Business/professional, [40, 53, 27, 28];  
86.31(b) (7)  
Honor societies, [40, 53]; 86.31(b) (7)  
Fringe benefits, [67, 88, 89]; 86.56, 86.39  
Part-time employees, [89]  
  
G  
Grievance Procedure, see “Designation of responsible  
employee”, 86.8(a) (b)  
  
H  
Health and Insurance Benefits and Services,  
[67, 88, 93]; 86.39, 86.56  
Honor societies, [40, 53]; 86.31(b) (7)  
Housing, 86.32  
Generally, [42]; 86.32(b)  
Provided by recipient, 86.32(b)  
Other housing, [54]; 86.32(c)  
  
J  
Job Classification and Structure, 86.55  
  
L  
LEA’s, [44]; 86.35  
  
M  
Marital and Parental Status  
Employment  
General, [85, 93, 94]; 86.57  
Pregnancy, [85, 93, 94]; 86.57(b)  
Pregnancy as a temporary disability, [85, 93, 94]; 86.57(c)  
Pregnancy leave, [85, 93, 94]; 86.57(d)  
Students  
General, [49]; 86.40(a) (b)  
Pregnancy and related conditions, [50];  
86.40(b) (1) (2) (3) (4) (5)  
Class participation, [50]; 86.40(b) (1)  
Physician certification, [50]; 86.40(b) (2)  
Special classes, [50]; 86.40(b) (3)  
Temporary leave, [50]; 86.40(b) (4) (5)  
Membership Practices of Social fraternities  
and sororities, [27, 28, 53]; 86.14(a)  
Voluntary youth service organizations, [27, 28, 53]; 86.14(c)  
YMCA, YWCA and others, [27, 28, 53];  
86.14(b)  
Military and Merchant Marine Educational  
Institutions, [29]; 86.13  
  
P  
Pooling, see “Financial Assistance”, 86.37  
Pre-employment Inquiries  
Marital status, [86, 95]; 86.60(a)  
Sex, 86.60(b)  
Preference in Admissions, [35]; 86.22

## Pt. 86, App. A

See also “Remedial and Affirmative Action”

Pregnancy, Employment

General, [85, 93, 94]; 86.57

Pregnancy, [85, 93, 94]; 86.57(b)

Pregnancy as temporary disability, [85, 93, 94]; 86.57(c)

Pregnancy leave, [85, 93, 94]; 86.57(d)

Students

General, [49, 50]; 86.40(a) and (b)

Pregnancy and related conditions; [50]; 86.40(b) (1) to (5)

Class Participation, [50, 55, 58]; 86.40(b) (1)

Physical certification, [50]; 86.40(b) (2)

Special class, [50]; 86.40 (b) (3)

Temporary leave, [50]; 86.40(b) (4), (5)

Private Undergraduate Professional Schools, [30]; 86.15(d)

Purpose of Regulation, [13]; 86.1

## R

Real Property, 86.2(g)

Recruitment

Employment

Nondiscrimination, [83, 91]; 86.53(a)

Patterns, 86.53(b)

Student

Nondiscrimination, [34, 35]; 86.23(a)

Recruitment at certain institutions, 86.23 (b)

Religious Organizations

Application, [29, 28]; 86.12(a)

Exemption, [26]; 86.12(b)

Remedial and Affirmative Actions, [16, 17, 24]; 86.3

## S

Scholarships, see “Financial Assistance”, 86.37

Self-evaluation, [16, 22]; 86.3(c) (d)

Surplus Property (see Transfer of Property 86.5)

Duration of obligation 86.4(b)

Real Property 86.4(b) (1)

## T

Textbooks and curricular materials, [52, 79, 80]; 86.42

Termination of funds, [10, 11]

Transfer of property, 86.5

Transition Plans

Content of plans, 86.17(b)

Different from Adjustment period, [78]; 86.41(d)

Submission of plans, 86.17(a)

## 45 CFR Subtitle A (10–1–22 Edition)

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 Definitions.

87.2 Applicability.

87.3 Faith-based organizations and Federal financial assistance.

87.4 Severability.

APPENDIX A TO PART 87—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

APPENDIX B TO PART 87—NOTICE OF AWARD OR CONTRACT

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.*

SOURCE: 81 FR 19426, Apr. 4, 2016, unless otherwise noted.

### § 87.1 Definitions.

The following definitions apply for the purposes of this part.

(a) *Direct Federal financial assistance*, *Federal financial assistance provided directly*, or *direct funding* means financial assistance received by an entity selected by the Government or a pass-through entity (as defined in this part) to carry out a service (e.g., by contract, grant, or cooperative agreement). References to Federal financial assistance will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance or Federal financial assistance provided indirectly.

(b) *Directly funded* means funded by means of direct Federal financial assistance.

(c) *Indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-