

§§ 86.62–86.70

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)

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION¹

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)

¹Preamble paragraph numbers are in brackets [].

45 CFR Subtitle A (10–1–16 Edition)

- 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)
 - 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

Department of Health and Human Services

Pt. 86, Index

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)
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

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)

Pt. 86, App. A

45 CFR Subtitle A (10–1–16 Edition)

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)

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 Grants.

AUTHORITY: 5 U.S.C. 301.

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

§ 87.1 Definitions.

(a) These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular program or activities.

(b) The terms *direct Federal financial assistance*, *Federal financial assistance provided directly*, *direct funding*, and *directly funded* mean that the government or a pass-through entity (under this part) selects the provider and either purchases services from that provider (e.g., via a contract) or awards funds to that provider to carry out a service (e.g., via grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of “indirect Federal financial assistance” or “Federal financial assistance provided indirectly.”

(c) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment.

(1) Federal financial assistance provided to an organization is considered indirect when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion;

(ii) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

(2) The recipients of sub-grants that receive Federal financial assistance through State-administered programs are not considered recipients of “indirect Federal financial assistance” [or recipients of “Federal funds provided indirectly”] as those terms are used in this part.

(d) *Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

(e) *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.