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unless regulations in part 75 or a program's regulations specifically provide otherwise.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30336, July 8, 1992]

ELIGIBILITY FOR A GRANT

§ 75.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Department is governed by the authorizing statute and implementing regulations for that program.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27803, July 24, 1987]

§ 75.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of *nonprofit* in 34 CFR 77.1.)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant;

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(5) For an entity that holds a sincerely held religious belief that it can-

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not apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (b)(1) through (4) of this section.

[45 FR 22497, Apr. 3, 1980, as amended at 85 FR 82126, Dec. 17, 2020]

§ 75.52 Eligibility of faith-based organizations for a grant and non-discrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other organization, with respect to programs for which such other organizations are eligible and considering any permissible accommodation. The Department shall provide such religious accommodation as is consistent with Federal law, the Attorney General's Memorandum of October 6, 2017 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution.

(2) In the selection of grantees, the Department may not discriminate for or against a private organization on the basis of the organization's religious character, affiliation, or exercise and must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that receive

grants under a program of the Department, including organizations with religious character or affiliation, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department shall disqualify faith-based organizations from applying for or receiving grants under a program of the Department because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, or on grounds that discriminate against organizations on the basis of the organizations' religious exercise.

(b) The provisions of § 75.532 apply to a faith-based organization that receives a grant under a program of the Department.

(c)(1) A private organization that applies for and receives a grant under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by a grant from the Department. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services funded by the grant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by "indirect Federal financial assistance."

(3) For purposes of 2 CFR 3474.15, this section, § 75.714, and appendices A and B to this part, the following definitions apply:

(i) *Direct Federal financial assistance* means financial assistance received by an entity selected by the Government or a pass-through entity (under 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*.

(ii) *Indirect Federal financial assistance* 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 similar means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is *indirect* under this definition if—

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

(B) The organization receives the assistance as the result of the genuine, independent choice of the beneficiary.

(iii) *Federal financial assistance* does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

(iv) *Pass-through entity* means an entity, including a nonprofit or non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(v) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).

(vi) *Discriminate against an organization on the basis of the organization's religious exercise* means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an organization in the selection process or has such an effect because of:

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(A) Conduct that would not be considered grounds to disfavor a secular organization,

(B) Conduct that must or could be granted an appropriate accommodation in a manner consistent with RFRA (42 U.S.C. 2000bb through 2000bb-4) or the Religion Clauses of the First Amendment to the Constitution, or

(C) The actual or suspected religious motivation of the organization's religious exercise.

NOTE 1 TO PARAGRAPH (C)(3): The definitions of *direct Federal financial assistance* and *indirect Federal financial assistance* do not change the extent to which an organization is considered a recipient of Federal financial assistance as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

(d)(1) A faith-based organization that applies for or receives a grant under a program of the Department will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protections of law.

NOTE 1 TO PARAGRAPH (D)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, "Federal Law Protections for Religious Liberty" (Oct. 6, 2017) (describing Federal law protections for religious liberty).

(2) A faith-based organization that applies for or receives a grant under a program of the Department may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) An organization that receives any Federal financial assistance under a program of the Department shall not

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discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(f) If a grantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement federally funded activities, the grantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from the Department. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

(h) *The Department shall not construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.*

[85 FR 82126, Dec. 17, 2020]

**INELIGIBILITY OF CERTAIN INDIVIDUALS
TO RECEIVE ASSISTANCE**

SOURCE: Sections 75.60 through 75.62 appear at 57 FR 30337, July 8, 1992, unless otherwise noted.