

## § 76.52

(c) Allows some combination of these procedures.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 54 FR 21776, May 19, 1989]

### **§ 76.52 Eligibility of faith-based organizations for a subgrant and non-discrimination against those organizations.**

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

(2) In the selection of subgrantees and contractors, States may not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and must ensure that all decisions about subgrants 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 a lack thereof.

(b) The provisions of § 76.532 apply to a faith-based organization that receives a subgrant from a State under a State-administered program of the Department.

(c)(1) A private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, must offer those activities separately in time or location from any programs or services supported by a subgrant from a State under a State-administered program of the Department, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the subgrant 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, 34 CFR 76.52, 76.712, 76.713, and 76.714, the following definitions apply:

## 34 CFR Subtitle A (7-1-20 Edition)

(i) Direct Federal financial assistance means that the Department, grantee, or subgrantee selects a provider and either purchases services from that provider (such as through a contract) or awards funds to that provider (such as through a grant, subgrant, or cooperative agreement) to carry out services under a program of the Department. Federal financial assistance shall be treated as direct unless it meets the definition of "indirect Federal financial assistance."

(ii) Indirect Federal financial assistance means that the choice of a service provider under a program of the Department 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. 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;

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

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

NOTE 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 subgrant from a State under a State-administered program of the Department may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization 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;

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

(iv) Select its board members and otherwise govern itself on a religious basis; and

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

(e) A private organization that receives any Federal financial assistance under a program of the Department shall not 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 financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(f) If a State or subgrantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement Federally funded activities, the State or subgrantee 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.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a))

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[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 69 FR 31711, June 4, 2004; 81 FR 19408, Apr. 4, 2016]

**Subpart B—How a State Applies for a Grant**

STATE PLANS AND APPLICATIONS

**§ 76.100 Effect of this subpart.**

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

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

[52 FR 27804, July 24, 1987]

**§ 76.101 The general State application.**

A State that makes subgrants to local educational agencies under a program subject to this part shall have on file with the Secretary a general application that meets the requirements of section 441 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1221e-3, 1232d, and 3474)

[52 FR 27804, July 24, 1987, as amended at 60 FR 46493, Sept. 6, 1995]

**§ 76.102 Definition of “State plan” for part 76.**

As used in this part, *State plan* means any of the following documents:

Document	Program	Authorizing statute	Principal Office
State plan .....	Assistance to States for Education of Handicapped Children.	Part B (except section 619), Individuals with Disabilities Education Act (20 U.S.C. 1411-1420).	OSERS
Application .....	Preschool Grants .....	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419).	OSERS
Application .....	Handicapped Infants and Toddlers.	Part H, Individuals with Disabilities Education Act (20 U.S.C. 1471-1485).	OSERS
Application or written request for assistance.	Client Assistance Program .....	Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732).	OSERS
Application .....	Removal of Architectural Barriers to the Handicapped Program.	Section 607, Individuals with Disabilities Education Act (20 U.S.C. 1406).	OSERS