

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 VO-
CATIONAL 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**

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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 di-
rectly, or *direct funding* means financial
assistance received by an entity se-
lected by the Government or a pass-
through entity (as defined in this part)
to carry out a service (e.g., by con-
tract, grant, or cooperative agree-
ment). References to Federal financial
assistance will be deemed to be re-
ferences to direct Federal financial as-
sistance, unless the referenced assist-
ance meets the definition of indirect
Federal financial assistance or Federal
financial assistance provided indi-
rectly.

(b) *Directly funded* means funded by
means of direct Federal financial as-
sistance.

(c) *Indirect Federal financial assistance*
or *Federal financial assistance provided*
indirectly means Federal financial as-

sistance received by a service provider
when the service provider is paid for
services rendered by means of a vouch-
er, certificate, or other means of Gov-
ernment-funded payment provided to a
beneficiary who is able to make a
choice of a service provider, and:

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

(2) The service provider receives the
assistance wholly as a result of a gen-
uine and independent private choice of
the beneficiary, not a choice of the
Government. The availability of ade-
quate secular alternatives is a signifi-
cant factor in determining whether a
program affords true private choice.

(d) *Federal financial assistance* means
assistance that non-Federal entities re-
ceive or administer in the form of
grants, contracts, loans, loan guaran-
tees, property, cooperative agreements,
food commodities, direct appropri-
ations, or other assistance, but does not
include a tax credit, deduction, or ex-
emption. Federal financial assistance
may be direct or indirect.

(e) *Pass-through entity* means an enti-
ty, including a nonprofit or nongovern-
mental 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 ac-
cepts direct Federal financial assist-
ance as a primary recipient or grantee
and distributes that assistance to other
organizations that, in turn, provide
government funded social services.

(f) *Recipient* means a non-Federal en-
tity that receives a Federal award di-
rectly from a Federal awarding agency
to carry out an activity under a Fed-
eral program. The term recipient does
not include subrecipients, but does in-
clude pass-through entities.

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

[85 FR 82145, Dec. 17, 2020, as amended at 89
FR 15721, Mar. 4, 2024]

§ 87.2 Applicability.

This part applies to grants awarded in HHS social service programs governed by either the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 2 CFR parts 200 and 300 or Block Grant regulations at 45 CFR part 96, except as provided in paragraphs (a) and (b) of this section.

(a) *Discretionary grants.* This part is not applicable to the discretionary grant programs that are governed by the Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice regulations found at 42 CFR part 54a. This part is also not applicable to discretionary grant programs that are governed by the Community Services Block Grant (CSBG) Charitable Choice regulations at 45 CFR part 1050, with the exception of §§ 87.1 and 87.3(k) through (m) and (o), which do apply to such CSBG discretionary grants. Discretionary grants authorized by the Child Care and Development Block Grant Act are also not governed by this part.

(b) *Formula and block grants.* This part does not apply to non-discretionary and block grant programs governed by the SAMHSA Charitable Choice regulations found at 42 CFR part 54, or the Temporary Assistance for Needy Families (TANF) Charitable Choice regulations at 45 CFR part 260. Block grants governed by the CSBG Charitable Choice regulations at 45 CFR part 1050 are not subject to this part, with the exception of §§ 87.1 and 87.3(k) through (m) and (o), which do apply to such CSBG block grants. This part is not applicable to Child Care and Development Block Grants governed by 45 CFR part 98.

[81 FR 19426, Apr. 4, 2016, as amended at 89 FR 15721, Mar. 4, 2024; 89 FR 80070, Oct. 2, 2024]

§ 87.3 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HHS awarding agency program or service for which they are otherwise eligible. Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving

funds under any HHS awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) Nothing in this part shall be construed to preclude HHS from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(c) HHS shall not disqualify an organization from participating in any HHS program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and HHS has determined that it would deny the accommodation.

(d) Organizations that receive direct financial assistance from an HHS awarding agency may not engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct financial assistance from the HHS awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HHS's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(e) A faith-based organization that participates in HHS awarding-agency

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funded programs or services will retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its mission statements and other governing documents. In addition, a faith-based organization that receives financial assistance from the HHS awarding agency does not lose the protections of law.

(f) An organization, whether faith-based or not, that receives Federal financial assistance from HHS shall not, in providing services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, a faith-based organization receiving indirect Federal financial assistance need not modify any religious components or integration with respect to its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency 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

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faith-based and non-faith-based organizations. All organizations, whether faith-based or not, that participate in HHS awarding agency programs or services must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that HHS grants to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall disqualify faith-based organizations from participating in the HHS awarding agency's programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the faith-based organization receives direct or indirect Federal financial assistance from an HHS awarding agency. Some HHS awarding agency programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. In this case, grantees should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements.

(i) In general, the HHS awarding agency does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HHS awarding agency programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations

that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements. In HHS awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so 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 or other governmental taxing body or the State secretary of State certifying that:

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

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

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

(4) Any item described in paragraphs (i)(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.

(j) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement HHS awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

(k) An organization providing social services under a discretionary grant program of HHS that is supported by Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. A pass-through entity administering social service programs under a mandatory formula, block or entitlement grant of HHS that is supported by Federal financial assistance shall ensure that beneficiaries and prospective beneficiaries receive written notice of certain protections.

(1) The written notice to beneficiaries and prospective beneficiaries of directly funded social services shall include language substantially similar to that found in appendix A to this part. The notice must include the following information:

(i) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(iv) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with either the HHS awarding entity or the pass-through entity that awarded funds to the organization, which must promptly report the complaint to the HHS awarding entity. The HHS awarding entity will address the complaint in consultation with the HHS Office for Civil Rights.

(2) The written notice to beneficiaries of indirectly funded social services must identify the protections in paragraphs (f) and (k)(1)(ii) and (iv) of this section; it must also provide the

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contact information of the HHS awarding entity or the pass-through entity that administers the program.

(l) The written notice described in paragraph (k) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections and provide the notice at the earliest available opportunity.

(m) The written notice described in paragraph (k) of this section must be given in a manner prescribed by the HHS awarding agency in consultation with the HHS Office for Civil Rights, such as by incorporating the notice into materials that are otherwise provided to beneficiaries. The HHS awarding agency, in consultation with the HHS Office for Civil Rights, may determine that the notice must inform each beneficiary or prospective beneficiary of the option to seek information from the HHS awarding agency, or another entity administering the applicable program, about other federally funded organizations in their area, if any, that provide the services available under the applicable program.

(n) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices B and C to this part.

(o) Decisions about awards of direct Federal financial assistance must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization, and must be free from political interference or even the appearance of such interference.

(p) Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall 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

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comparison with other religions or sects.

(q) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

[85 FR 82146, Dec. 17, 2020, as amended at 89 FR 15721, Mar. 4, 2024]

§ 87.4 Severability.

To the extent that any provision of this part is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

[89 FR 15723, Mar. 4, 2024]

APPENDIX A TO PART 87—DIRECT AID PROGRAMS: WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

Name of Organization:

Name of Program:

Contact Information for Program Staff:
[provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with [identify the HHS awarding entity, or the pass-through entity that awarded funds to your organization, and the phone number and physical street and/or email address of the identified office]. The HHS awarding entity will address the complaint in consultation with the HHS Office for Civil Rights;

[When required by the HHS awarding agency, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information set forth above.

We must give you this notice before you enroll in or receive services from the program, unless the nature of the service provided or exigent circumstances make advanced notice impracticable. In that case, this notice must be given to you at the earliest available opportunity.

[89 FR 15723, Mar. 4, 2024]

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

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* HHS will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from HHS to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and

any other applicable requirements. Such an organization also may not, in providing services funded by HHS, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15723, Mar. 4, 2024]

APPENDIX C TO PART 87—NOTICE OF AWARD OR CONTRACT

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from HHS to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15723, Mar. 4, 2024]

PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCRIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW

Sec.

88.1 Purpose.

88.2 Complaint handling and investigating.

88.3 Notice of Federal conscience and nondiscrimination laws.

88.4 Severability.

APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND NONDISCRIMINATION LAWS

AUTHORITY: 5 U.S.C. 301.

SOURCE: 89 FR 2107, Jan. 11, 2024, unless otherwise noted.