

§ 17.550

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§ 17.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§17.500 through 17.550 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 that 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.

Subpart F—Procedures

§ 17.600 Notice of covered programs.

Within 60 days of March 6, 2003, each component of the Department that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such component shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Department's office that enforces Title IX.

§ 17.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 6 CFR part 21.

§ 17.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in §17.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

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APPENDIX C TO PART 19—WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 101 *et seq.*; 8 U.S.C. 1101 *et seq.*; 42 U.S.C. 5164, 5183, 5189d; 42 U.S.C. 2000bb *et seq.*; 42 U.S.C. 11331 *et seq.*

E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13403, 71 FR 28543, 3 CFR, 2006 Comp., p. 228; E.O. 13498, 74 FR 6533, 3 CFR, 2009 Comp., p. 219; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

SOURCE: 81 FR 19410, Apr. 4, 2016, unless otherwise noted.

§ 19.1 Purpose.

It is the policy of the Department of Homeland Security (DHS) to ensure the equal treatment of faith-based and other organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. The equal treatment policies and requirements contained in this part are generally applicable to faith-based and other organizations participating or seeking to participate in any such programs. More specific policies and requirements regarding the participation of faith-based and other organizations in individual programs may be provided in the statutes, regulations, or guidance governing those programs, such as regulations in title 44 of the Code of Federal Regulations. DHS or its components may issue policy guidance and reference materials at a future time with respect to the applicability of this policy and this part to particular programs.

[89 FR 15705, Mar. 4, 2024]

§ 19.2 Definitions.

For purposes of this part:

Beneficiary means an individual recipient of goods or services provided as part of a social service program specifically supported by Federal financial assistance. “Beneficiary” does not mean an individual who may incidentally benefit from Federal financial assistance provided to a State, local, or Tribal government, or a private non-profit organization. Except where expressly noted or where inapplicable, “beneficiary” includes a prospective beneficiary.

Direct Federal financial assistance or Federal financial assistance provided directly means financial assistance received by an entity selected by the Government or an intermediary (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” or “Federal financial assistance provided indirectly”.

Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, or proselytization. An activity is not explicitly religious merely because it is motivated by religious faith.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

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-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 considered “indirect” when:

(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 organization receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social

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services. If an intermediary, 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 supported by the Federal Government, the intermediary must ensure compliance with the provisions of this part by the recipient of a contract, grant, or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

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

Social service program means a program that is administered by the Federal government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

- (1) Child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
- (2) Transportation services;
- (3) Job training and related services, and employment services;
- (4) Information, referral, and counseling services;
- (5) The preparation and delivery of meals and services related to soup kitchens or food banks;
- (6) Health support services;
- (7) Literacy and mentoring programs;
- (8) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the pre-

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vention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and

(9) Services related to the provision of assistance for housing under Federal law.

[81 FR 19410, Apr. 4, 2016, as amended at 85 FR 82130, Dec. 17, 2020; 89 FR 15705, Mar. 4, 2024]

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

(a) Faith-based organizations are eligible on the same basis as any other organization to seek and receive direct financial assistance from DHS for social service programs or to participate in social service programs administered or financed by DHS.

(b) Neither DHS, nor a State or local government, nor any other entity that administers any social service program supported by direct financial assistance from DHS, shall 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.

(c) Nothing in this part shall be construed to preclude DHS 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.

(d) DHS shall not disqualify an organization from participating in any DHS program for which it is otherwise 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 DHS has determined that it would deny the accommodation.

(e) Decisions about awards of Federal financial assistance must be free from political interference, or even the appearance of such interference, and must be made on the basis of merit,

not on the basis of religion or religious belief or lack thereof, or on the basis of religious or political affiliation.

(f) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or an intermediary in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs:

(1) On the basis of such organization's religious character, motives, or affiliation, or lack thereof; or

(2) On the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by DHS or an intermediary in administering financial assistance from DHS 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.

[89 FR 15705, Mar. 4, 2024]

§ 19.4 Explicitly religious activities.

(a) Organizations that receive direct financial assistance from DHS to participate in or administer any social service program may not use direct Federal financial assistance that it receives (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) or in any other manner prohibited by law.

(b) Organizations receiving direct financial assistance from DHS for social service programs are free to engage in explicitly religious activities, but such activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from DHS, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(c) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, and in accordance with all other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted 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 that is used by DHS or a State or local government in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because of such 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.

(d) The use of indirect Federal financial assistance is not subject to the restriction in paragraphs (a), (b), and (c) of this section.

(e) Nothing in this part restricts DHS'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.

(f) 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

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that has been invalidated to remain in effect.

[81 FR 19410, Apr. 4, 2016, as amended at 85 FR 82131, Dec. 17, 2020; 89 FR 15706, Mar. 4, 2024]

§ 19.5 Nondiscrimination requirements.

An organization that receives financial assistance from DHS for a social service program shall not, in providing services or in outreach activities related to such services, favor or discriminate against a beneficiary of said program or activity 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. Organizations that favor or discriminate against a beneficiary will be subject to applicable sanctions and penalties, as established by the requirements of the particular DHS social service program or activity. 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.

[89 FR 15706, Mar. 4, 2024]

§ 19.6 How to prove nonprofit status.

In general, DHS 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 DHS social service 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 for social service programs that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation for social service programs 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 DHS program office to determine the scope of any applicable requirements. In DHS social service pro-

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grams in which an applicant for funding must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(a) 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;

(b) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

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

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

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

(d) Any item described in paragraphs (a) through (c) 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

(e) Evidence that the DHS awarding agency determines to be sufficient to establish that the entity would otherwise qualify as a nonprofit organization.

[85 FR 82131, Dec. 17, 2020, as amended at 89 FR 15706, Mar. 4, 2024]

§ 19.7 [Reserved]

§ 19.8 Independence of faith-based organizations.

(a) A faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance will retain its autonomy; right of expression; religious character; authority over its governance; 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, provided that it does not use direct Federal financial assistance contrary to § 19.4.

(b) Faith-based organizations may use space in their facilities to provide

social services using financial assistance from DHS without removing, concealing, or altering religious articles, texts, art, or symbols.

(c) A faith-based organization using financial assistance from DHS for social service programs retains its authority over its internal governance, and it may retain religious terms in its organization's 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 organization's mission statements and other governing documents.

[85 FR 82131, Dec. 17, 2020]

§ 19.9 Exemption from Title VII employment discrimination requirements.

(a) A faith-based organization's exemption, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), from the Federal prohibition on employment discrimination on the basis of religion is not forfeited when the organization seeks or receives financial assistance from DHS for a social service program or otherwise participates in a DHS program.

(b) Where a DHS program contains independent statutory or regulatory provisions that impose nondiscrimination requirements on all grantees, those provisions are not waived or mitigated by this part. In this case, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

[81 FR 19410, Apr. 4, 2016, as amended at 89 FR 15706, Mar. 4, 2024]

§ 19.10 Commingling of Federal assistance.

(a) If a State, local, or Tribal government voluntarily contributes its own funds to supplement Federally supported activities, the State, local, or Tribal government has the option to segregate the Federal assistance or commingle it.

(b) If the State, local, or Tribal government chooses to commingle its own and Federal funds, the requirements of this part apply to all of the commingled funds.

(c) If a State, local, or Tribal government is required to contribute matching funds to supplement a Federally supported activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this part.

§ 19.11 Nondiscrimination among faith-based organizations.

Neither DHS nor any State or local government or other intermediary receiving funds under any DHS social service program 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 comparison with other religions or sects.

[85 FR 82132, Dec. 17, 2020]

§ 19.12 Notifications to beneficiaries and applicants.

(a) Organizations providing social services to beneficiaries under a program supported by direct Federal financial assistance from DHS must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner and form prescribed by DHS's Office for Civil Rights and Civil Liberties, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This written notice shall include language substantially similar to that in appendix C to this part.

(b) The written notice described in paragraph (a) of this section must be given to prospective beneficiaries 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, organizations must advise beneficiaries of their protections at the earliest available opportunity.

(c) DHS may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from DHS, or a State agency or other entity administering the program, as to whether

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there are any other federally funded organizations in the area that provide the services available under the applicable program.

(d) 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.

[89 FR 15706, Mar. 4, 2024]

APPENDIX A TO PART 19—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITY

(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.* DHS 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 and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, or in 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 15707, Mar. 4, 2024]

APPENDIX B TO PART 19—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 and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with

the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, or in 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 15707, Mar. 4, 2024]

APPENDIX C TO PART 19—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 the Department of Homeland Security's Office for Civil Rights and Civil Liberties, [address]; and

[When required by DHS, 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.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must

be given to you at the earliest available opportunity.

[89 FR 15707, Mar. 4, 2024]

**PART 21—NONDISCRIMINATION
ON THE BASIS OF RACE, COLOR,
OR NATIONAL ORIGIN IN PRO-
GRAMS OR ACTIVITIES RECEIV-
ING FEDERAL FINANCIAL ASSIST-
ANCE FROM THE DEPARTMENT
OF HOMELAND SECURITY**

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APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES

APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

AUTHORITY: 5 U.S.C. 310, 42 U.S.C. 2000d–2000d–7.

SOURCE: 68 FR 10904, Mar. 6, 2003, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security. The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations.

§ 21.3 Application.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 21.5(c). The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 21.4 Definitions.

Unless the context requires otherwise, as used in this part:

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by the Secretary, or designee thereof, or by a primary recipient, as a condition to eligibility for Federal financial assistance,