

Frequently Asked Questions about the proposed rulemaking for “Partnerships with Faith-Based and Other Neighborhood Organizations”

Q: Why is the Department revising the current regulations?

A: The rules are being amended to implement Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations). President Obama issued Executive Order 13559 in response to recommendations made by a diverse group of faith and community leaders in 2009 (The President’s Advisory Council for Faith-Based and Neighborhood Partnerships).

Q: What did Executive Order 13559 do?

A: Executive Order 13559 amended Executive Order 13279, signed by President Bush in 2002, to clarify the fundamental principles that guide agencies’ work with faith-based and neighborhood organizations. The Executive Order also established the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to review and evaluate existing regulations, guidance documents, and policies, and to develop a model set of regulations and guidance for agencies to adopt. The Working Group set forth model regulations and guidance in its “Report to the President: Recommendations of the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships.” The Report is available at <http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf>.

Q: What amendments are being made to the Rules?

A: Consistent with Executive Order 13559, the Department amends the current regulations in the following ways:

- The proposed rule clarifies the definitions of direct and indirect financial assistance.
- The proposed rule replaces the term “inherently religious activities” with the term “explicitly religious activities” and define the latter term as “including activities that involve overt religious content such as worship, religious instruction, or proselytization.”
- The proposed rule states that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be based on merit, not on the basis of religion or religious belief.
- The proposed rule clarifies that the standards in the regulations apply to subawards as well as prime awards, such as awards made to State or local governments that, in turn, distribute the assistance to other organizations.
- The proposed rule requires faith-based organizations that are supported with direct DOJ financial assistance to provide beneficiaries with a written notice informing them of a number of protections, including the option to be referred to an alternative provider if the beneficiary objects to the religious character of the organization providing services.

- The proposed rule adds a provision requiring that applications for direct Federal financial assistance include an assurance or statement that the program is or will be conducted in compliance with the regulations.
- The proposed rule clarifies that the Office of Civil Rights in the Department's Office of Justice Programs may review the practices of recipients of direct Federal financial assistance to determine whether they are in compliance with the regulations.

Q: Would the regulations apply to all organizations or only to faith-based organizations?

A: The regulations generally would apply to all organizations, though the notice to beneficiaries provision and the referral provision would only apply to faith-based or religious organizations.

Q: Will faith-based organizations be able to maintain their religious identity after receiving federal funding from the Department?

A: Yes. Faith-based organizations that receive federal funding are permitted to use religious terms in their organizational names; select board members on a religious basis; include religious references in mission statements and other organizational documents; and post religious art, messages, scriptures, and symbols in buildings where they deliver federally funded services and benefits. Moreover, the regulations acknowledge that the recipient may engage in explicitly religious activities that are separated in time or location from the federally funded activities and which are voluntary for beneficiaries.

Q: How many faith-based organizations does the Department fund?

A: The Department's funding of faith-based or religious organizations varies each funding cycle. But on average, the Department funds approximately 100 faith-based grantees.

Q: What protections does the revised Rule provide beneficiaries of federal funding?

A: Executive Order 13559 mandates several valuable protections for social service beneficiaries. The proposed rule implements Executive Order 13559 by requiring faith-based or religious organizations administering a program that is supported by direct Federal financial assistance to give written notice to beneficiaries and prospective beneficiaries of their rights. The written notice provides, among other things, notice of the option to be referred to an alternative provider if a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to an organization's religious character.

Q: Why is it necessary to include those protections?

A: The proposed rule's protections ensure that Federal financial assistance is not used to coerce or pressure beneficiaries along religious lines, and they ensure that beneficiaries are aware of their protections, through appropriate notice, when potentially obtaining services from providers with a religious affiliation.

Q: What is the difference between “direct” and “indirect” Federal financial assistance?

A: Executive Order 13559’s limitation on explicitly religious activities applies to programs that are supported with “direct” Federal financial assistance but *does not* apply to those supported with “indirect” Federal financial assistance. Under the proposed rule, programs would be understood to be supported with “direct” Federal financial assistance when either the Government or an intermediary (as identified in the rule) selects a service provider and either purchases services from that provider (e.g., through a contract) or awards funds to that provider to carry out a social service. “Indirect” Federal financial assistance places the choice of service provider in the hands of a beneficiary before the Government pays for the cost of that service.

Q: Can States continue to use intermediaries?

A: Yes. A State, however, must continue to monitor effectively the actions of faith-based or religious organizations that receive federal funding to ensure that providers are selected, and deliver services, in a manner consistent with the First Amendment’s Establishment Clause.

Q: Is political or religious affiliation taken into account during the grant awarding process?

A: No. Although the proposed rule does not affect the existing eligibility of faith-based or religious organizations to participate in Department programs for which they are otherwise eligible, it further provides that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference.

Q: When does the comment period end for the notice of proposed rulemaking?

A. October 5, 2015