

# More Than Rules

## *How Equal Treatment of Faith-Based NGOs Can Expand Services to America's Needy*

Task Force on Faith-Based and Community  
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# Equal Treatment For Faith-Based Organizations:

*It's The Law*

## Title 28, Code of Federal Regulations Part 38 (70 Fed. Register)

- 38.1 - Discretionary Grants, Contracts, and Cooperative Agreements

- 38.2 - Formula and Block Grants





# ***Why Equal Treatment?***

**A Federal audit found that some federal offices:**

- favored prior grantees
- excluded Faith-Based Organizations (“FBOs”) altogether from certain Federal programs
- were unaware of the services and capabilities of FBOs
- conditioned funding on an FBO’s willingness to accept excessive restrictions on religious activities





# Quiz

## *True or False:*

1. The Faith-Based and Community Initiative encourages government grant-making agencies to **favor** faith-based groups when awarding federal funds.

Answer: *False.*

*By law, government is required to be neutral with respect to religion.* The Initiative removes barriers to FBCO participation in federal programs, and ensures a “level playing field” for all groups and persons, religious or secular





# Quiz

*True or False:*

2. The Constitution strictly prohibits the government from providing funding to or partnering with any faith-based group.

Answer: *False.*

*The Supreme Court has “consistent[ly] reject[ed] ... the argument that ‘any program which in some manner aids an institution with a religious affiliation’ automatically violates the Establishment Clause”*

*Mueller v. Allen (1983) [citing cases as far back as 1899];*

*See also Mitchell v. Helms (2000)*





# Quiz

## *True or False:*

3. Faith-based groups that receive government assistance must hide their religious identity, limit their religious activities, restrict board membership, and remove religious icons from their facilities.

Answer: *False.*

*FBOs can partner with government and still retain their religious activities, mission, icons & form of governance.*





## 4. What are “Faith-Based” and “Community” Organizations (FBCOs)?

*FBCOs include religious and non-religious non-profit groups that:*

*(choose all that apply):*

- A. Provide one or more social services;
- B. Identify themselves with (1) community objectives; and (2) religious or nonreligious traditions or philosophies;
- C. Operate in urban, suburban, or rural communities;
- D. Serve people in the U.S. or internationally;
- E. All of the above.





# Quiz

5. *DOJ's Equal Treatment Regulations apply to:*  
(choose all that apply)

- A. Federal, state, and local officials that distribute or administer federal assistance?
- B. Non-profit, for-profit, or public organizations that receive, distribute, or administer federal assistance?
- C. Federal discretionary, formula, and block grants?
- D. State funds combined with federal money?
- E. State, local, or private funds that are required as a match for federal assistance?
- F. Cooperative agreements (federal contracts for services)?
- G. Nonprofits that receive subgrants from federal grantees?
- H. All of the above?





# **Core Principles of DOJ's Equal Treatment Regulations**

**(Title 28, Code of Federal Regulations, Part 38)**

***Constitutional Use of Federal Assistance***

***Equal Opportunity for All Organizations***

***Respect for the Rights of Faith-Based  
Organizations***

***Respect for the Religious Liberty of  
Beneficiaries***





## ***Constitutional Uses of Federal Assistance***

***6. Most federal assistance to non-government organizations is “direct assistance” and includes:***

(choose those that apply):



• Discretionary Grants



• Formula and Block Grants to State Gov'ts



• Cooperative Agreements & Contracts



• Sub-Grants

• Vouchers



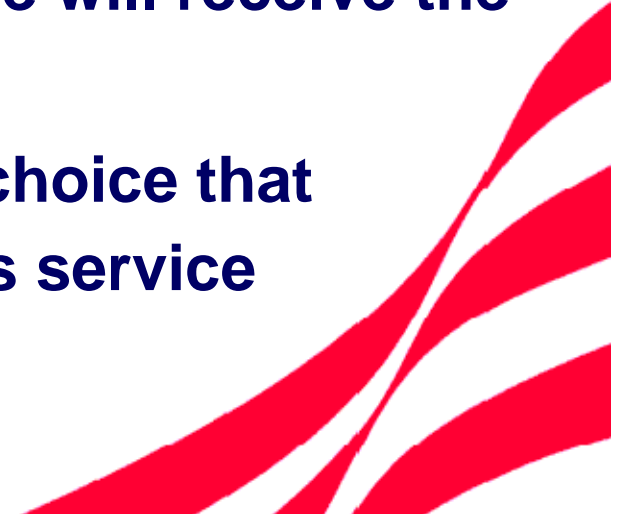


## *Constitutional Uses of Federal Assistance*

*Vouchers are indirect - - not direct - - federal assistance.*

**“Indirect” federal assistance** means the beneficiary:

- **Freely chooses from whom he/she will receive the federally-funded service;**
- **Is given a genuine, independent choice that includes at least one non-religious service provider.**

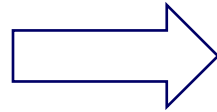




# Constitutional Uses of Federal Assistance

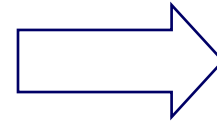
## Direct vs. Indirect Federal Assistance

**Direct:**

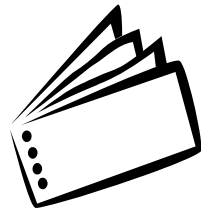


**1  
FBCO**

**SERVICE**



**Indirect:**



**CHOICE**



**Several  
FBCOs**



**SERVICE**





## ***Constitutional Uses of Federal Assistance***

**Direct federal assistance cannot be used to pay for “inherently religious activities” such as:**

**Prayer**

**Worship**

**Religious Instruction, Scripture Study or  
Spiritual Counseling**

**Evangelism or proselytism**





## ***Constitutional Uses of Federal Assistance***

**7. When are such activities permissible in a program that receives direct federal funds?:**

**If the religious activities are:**

- A. privately funded;
- B. occur at a different time or in a different room from the federally-funded ;
- C. voluntary (attendance by b the religious activity is optional, order to receive the federally-fur
- D. all of the above





## ***Constitutional Uses of Federal Assistance***

If the federal assistance is ***indirect*** (i.e., beneficiaries have vouchers and choose their provider), then inherently religious activities may be:

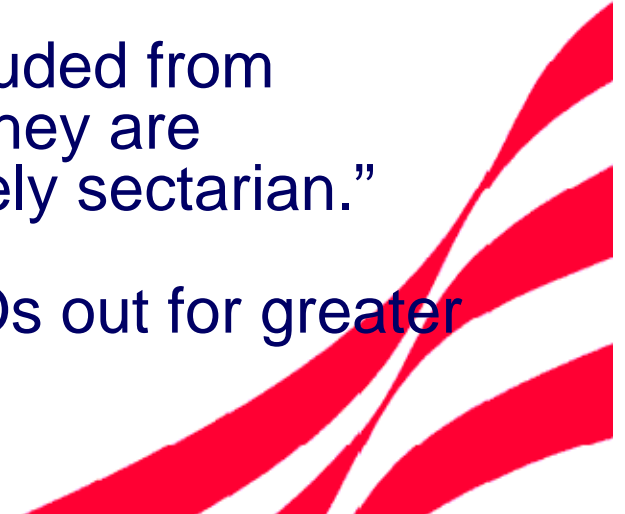
- Incorporated into a program
- Made mandatory for program participants *unless* a program statute contains a prohibition on doing so





## ***Equal Opportunity for All Organizations***

- ❑ Eligible organizations may not be denied the opportunity to compete for federal assistance, nor be discriminated for or against, on the basis of religious character or affiliation.
- ❑ There must not be any quotas or set-asides for faith-based groups or assumptions of effectiveness or ineffectiveness.
- ❑ Faith-based providers must not be excluded from federally-supported programs because they are perceived as “too religious” or “pervasively sectarian.”
- ❑ Religious identity must not single FBCOs out for greater oversight or monitoring







# ***Equal Opportunity for All Organizations***

**In short -**

**Grant applicants must be judged by what they can do,  
not who they are**





## ***Respect for the Rights of Faith-Based Organizations***

### ***8. Faith-based organizations that receive federal assistance may (choose those that apply) :***

- A. carry out their religious activities and display religious signs or symbols inside and outside their facilities;
- B. use religion as a basis to select their board members and govern themselves on a religious basis;
- C. offer voluntary religious activities to program beneficiaries;
- D. all of the above.





## ***Respect for the Rights of Faith-Based Organizations***

**9. True or False:**

***Faith-based organizations that receive federal assistance:***

***may, when hiring their staff or recruiting volunteers, take into account the religious belief or practice of applicants?***

***True.***





## ***Respect for the Rights of Faith-Based Organizations***

- **FBOs have the freedom to base employment decisions on religion** [Title VII of the Civil Rights Act of 1964], ***unless*** a program statute contains a prohibition on doing so.
- ***Even then, an FBO is entitled to consider religion when hiring if it certifies that its religious practice would be substantially burdened if it were unable to consider the religion of employee applicants. [Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb; for certification, see <http://www.usdoj.gov/fbci/effect-rfra.pdf>]***



## ***Respect for the Religious Liberty of Beneficiaries***

### **10. True or False:**

***Where direct federal funds are concerned, FBOs can discriminate among whom they serve based on religious belief, religious participation, or lack thereof.***

***False***



## ***Respect for the Religious Liberty of Beneficiaries***

Prospective or current program beneficiaries (clients):

- a. *Must be provided with **reasonable accommodation** for their religious beliefs in federally-supported programs (“**reasonableness**” is determined on a case-by-case-basis)*



## ***Respect for the Religious Liberty of Beneficiaries***

Prospective or current program beneficiaries (clients):

- b. Must be informed that (1) participation in inherently religious activities in a direct (not voucherized) program is voluntary and (2) their choice whether or not to participate will not affect the quality of the service they receive
- c. May freely choose to participate in religious activities (see rules for “direct” and “indirect” assistance)



## Federal Resources & Contact Information

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