



*Washington, D.C. 20531*

**Effect of the Religious Freedom Restoration Act  
on  
Faith-Based Applicants for Grants**

The U.S. Department of Justice has concluded that the Religious Freedom Restoration Act (RFRA)<sup>1</sup> is reasonably construed, on a case-by-case basis, to require that its funding agencies permit faith-based organizations (FBOs) both to receive federal funds and to continue considering religion when hiring staff. As described more fully below, RFRA protects this right to prefer co-religionists for employees even if the statute that authorizes the funding program generally forbids consideration of religion in employment decisions by grantees.

Under the Department's construction of RFRA, a faith-based grantee's hiring preference for staff who share its religious identity and mission must be permitted if—

1. the FBO demonstrates that its program for which it seeks federal funding is an exercise of its religion;
2. the FBO demonstrates that requiring it to either forgo its religious preference in hiring or else forgo the federal funding would substantially burden that exercise of its religion; and
3. the funding entity is unable to demonstrate that applying the nondiscrimination provision to this FBO both would further a compelling government interest and would be the least restrictive means of furthering this interest.

Furthermore, exemptions should be granted, on a case-by-case basis, to FBOs that certify the following, unless the funding entity has good reason to question the certification:

- 1) The FBO will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals; and**
- 2) Any activities of the FBO that contain inherently religious content will be kept separate in time or location from any services supported by direct federal funding, and, if provided under such conditions, will be offered only on a voluntary basis; and**
- 3) The FBO is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs; that employing individuals of particular religious belief is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.**

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<sup>1</sup> 42 U.S.C. § 2000bb.