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## Title 7 - Agriculture

### Subtitle A - Office of the Secretary of Agriculture

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## PART 16 - EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

**Authority:** 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13280, 67 FR 77145, 3 CFR, 2002 Comp., p. 262; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

**Source:** 69 FR 41382, July 9, 2004, unless otherwise noted.

### § 16.1 Purpose and applicability.

- (a) The purpose of this part is to set forth USDA policy regarding equal opportunity for religious organizations to participate in USDA assistance programs for which other private organizations are eligible.
- (b) The requirements established in this part do not prevent a USDA awarding agency or any State or local government or other intermediary from accommodating religion in a manner consistent with Federal law and the Religion Clauses of the First Amendment to the U.S. Constitution.
- (c) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 2 CFR part 400 applies, and to recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

[69 FR 41382, July 9, 2004, as amended at 81 FR 19413, Apr. 4, 2016; 85 FR 82132, Dec. 17, 2020]

### § 16.2 Definitions.

As used in this part:

*Direct Federal financial assistance, Federal financial assistance provided directly, Direct funding, or Directly funded*

means financial assistance received by an entity selected by the Government or intermediary (under this part) to carry out a service (e.g., by contract, grant, loan agreement, 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*. Except as otherwise provided by USDA regulation, the recipients of sub-grants that receive Federal financial assistance through State-administered programs (e.g., flow-through programs such as the National School Lunch Program authorized under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.) are not considered recipients of USDA indirect assistance. These recipients of sub-awards are considered recipients of USDA direct financial assistance.

*Discriminate against an organization on the basis of the organization's religious exercise* means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an organization in the selection process or has such an effect:

- (1) Because of conduct that would not be considered grounds to disfavor a secular organization;
- (2) Because of conduct that must or could be granted an appropriate accommodation in a manner consistent with RFRA (42 U.S.C. 2000bb through 2000bb-4) or the Religion Clauses of the First Amendment to the Constitution; or
- (3) Because of the actual or suspected religious motivation of the organization's religious exercise.

*Explicitly religious activities* include activities that involve overt religious content such as worship, religious instruction, or proselytization. Any such activities must be offered separately, in time or location, from the programs or services funded under the agency's grant or cooperative agreement, and participation must be voluntary for beneficiaries of the agency grant or cooperative agreement-funded programs and services.

*Federal financial assistance* does not include a guarantee or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits.

*Indirect Federal financial assistance or Federal financial assistance provided indirectly* refers to situations where the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment in accordance with the First Amendment of the U.S. Constitution.

*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 USDA direct assistance and distributes that assistance to other organizations that, in turn, provide government-funded 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 funded by the Federal Government, the intermediary must ensure compliance by the recipient of a contract, grant, or agreement with this part and any implementing rules or guidance. 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).

[85 FR 82132, Dec. 17, 2020]

### § 16.3 Faith-Based Organizations and Federal Financial Assistance.

(a)

(1) A faith-based or religious organization is eligible, on the same basis as any other organization, and considering a religious accommodation, to access and participate in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate against an organization on the basis of the organization's religious character, affiliation, or exercise.

(2) Additionally, decisions about awards of USDA direct assistance or USDA indirect assistance must be free from political interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B to this part.

(b) A faith-based or religious organization that participates in USDA assistance programs 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 USDA direct assistance to support any ineligible purposes, including explicitly religious activities that involve overt religious content such as worship, religious instruction, or proselytization. A faith-based or religious organization may:

(1) Use its facilities to provide services and programs funded with financial assistance from USDA awarding agency without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols,

(2) Retain religious terms in its organization's name,

(3) Select its board members and otherwise govern itself on a religious basis, and

(4) Include religious references in its mission statements and other governing documents.

(c) In addition, a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when an organization participates in a USDA assistance program.

(d) A faith-based or religious organization is eligible to access and participate in USDA assistance programs on the same basis as any other organization. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-religious organizations.

(1) Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

- (2) All organizations that participate in USDA awarding agency programs or services, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.
  - (3) No grant or agreement, document, loan agreement, covenant, memorandum of understanding, policy or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based or religious organizations from participating in the USDA awarding agency's programs or services because such organizations are motivated by or influenced by religious faith, or because of their religious character or affiliation, or on grounds that discriminate against organizations on the basis of the organizations' religious exercise, as defined in this part.
- (e) 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 delegated the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance by the subrecipient with the provisions of this part and any implementing regulations or guidance. 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.
- (f)
- (1) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).
  - (2) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the religious organization in accordance with applicable laws, regulations, and guidance.
  - (3) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.
- (g) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement USDA 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 section 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 section apply irrespective of whether such funds are commingled with Federal funds or segregated.

[85 FR 82133, Dec. 17, 2020]

## § 16.4 Responsibilities of participating organizations.

- (a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services, or, in the case of direct Federal financial assistance, outreach activities funded by such financial assistance, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. 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 and may require attendance at all activities that are fundamental to the program.
- (b) Organizations that receive USDA direct assistance under any USDA program may not engage in 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 by USDA direct assistance. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the Department's authority under applicable Federal law to fund activities that can be directly funded by the Government consistent with the Establishment Clause.
- (c) Nothing in paragraph (a) or (b) of this section shall be construed to prevent faith-based organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq., the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq., or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

[85 FR 82134, Dec. 17, 2020]

## § 16.5 Severability.

To the extent that any provision of this regulation is declared invalid by a court of competent jurisdiction, USDA 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.

[85 FR 82134, Dec. 17, 2020]

## Appendix A to Part 16 - 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 42 U.S.C. 2000bb et seq., USDA will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious character, affiliation, or exercise.
- (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 the U.S. Constitution and Federal law, including 42 U.S.C. 2000bb et seq., 42 U.S.C. 238n, 42

U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

- (c) A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, 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.

[85 FR 82134, Dec. 17, 2020]

## Appendix B to Part 16 - 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 the U.S. Constitution and Federal law, including 42 U.S.C. 2000bb et seq., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.
- (b) A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, 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.

[85 FR 82134, Dec. 17, 2020]