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GENERAL NEWS

HUD Announces Final Rule on Faith-Based Organizations

Today the Department of Housing and Urban Development ([HUD](#)) and the Department of Justice ([DOJ](#)) announced in two [press releases](#) a [final rule](#) pending publication in the *Federal Register*, Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities. HUD joined the Agency for International Development and the Departments of Justice, Labor, Homeland Security, Education, Health and Human Services, Veterans Affairs, and Agriculture to issue the joint final rule. As you recall, HUD had published a [proposed rule](#) regarding its own programs and activities on February 13. The rule implements various executive orders and amends federal regulations, including HUD regulations, to "provide clarity regarding the rights and obligations of faith-based organizations participating in the agencies' federal assistance programs and activities." Other than making the final rule applicable to other federal agencies in addition to HUD, the final rule makes few changes from the proposed rule. Specifically, the final rule:

- Removes the notice-and-referral requirements that were required of faith-based organizations but were not required of other organizations.
- Requires the agencies' notices or announcements of award opportunities and notices of awards or contracts to include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. HUD and some of the other agencies are also including specific language in these notices to clarify that, among other things, a faith-based organization may apply for awards on the same basis as any other organization; a participating faith-based organization retains its independence and may carry out its mission consistent with—and may be able to seek an accommodation under—religious freedom (and conscience) protections in federal law; and a faith-based organization may not discriminate against beneficiaries on certain religious bases.
- Clarifies that accommodations are available under existing federal law and directly references the definition of *religious exercise*.
- Updates the definition of *indirect federal financial assistance* by removing the requirement that beneficiaries have at least one secular option.
- Clarifies the existing provision that a faith-based organization participating in an indirect federal financial assistance program or activity need not modify its program to accommodate a beneficiary, so that it expressly states that such an organization need not modify its policies that require attendance in "all activities that are fundamental to the program."
- Clarifies that faith-based organizations participating in agency-funded programs will retain their autonomy, right of expression, religious character, and independence.
- Clarifies that none of the guidance documents that the agencies or their intermediaries use in administering financial assistance will require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular

organizations, and that any restrictions on the use of grant funds will apply equally to faith-based and secular organizations.

- Clarifies that faith-based organizations need not remove, conceal, or alter any religious symbols or displays.
- Clarifies the standard for permissible discrimination on the basis of religion with respect to employment or board membership, as relevant.
- Clarifies the methods that can be used to demonstrate nonprofit status.
- Updates the terminology to refer to *faith-based organizations*, not *religious organizations*.
- Clarifies that the agencies and their intermediaries cannot advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

Further details can be found in the prepublication copy of the final rule, accessible [here](#). The rule is slated to be published in the *Federal Register* on December 17.



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