



## FREQUENTLY ASKED QUESTIONS – GOVERNMENT PROGRAMS

### **1. Does the Constitution, or the so-called “separation of church and state,” prohibit a church or faith-based organization from participating in a government grant program?**

No, the government cannot discriminate against a religious organization competing for a secular grant because of the group’s religious nature.<sup>1</sup> But grant funds may not be used for inherently religious activities such as worship, prayer, proselytizing, or devotional Bible study.<sup>2</sup> The funds are to be used to further the objectives established by the legislature, such as reducing crime, assisting victims of crime, keeping juveniles out of the life of crime, mentoring youth and adults, providing food to the needy, etc. A faith-based organization should take steps to ensure that its inherently religious activities, such as religious worship or instruction, are separate in time or location from the government-funded services that it offers.<sup>3</sup>

### **2. Can a church use its church building to offer services under a government grant?**

Yes, you may use space in your church to provide federally-funded services. In addition, there is no need to remove religious art, icons, scripture, or other religious symbols from its property or its publications.<sup>4</sup>

### **3. If our organization has Christian references in its name, will we have to change it in order to receive a government grant?**

No, a faith-based or religious organization does not need to change its identity – including its name or chartering documents – in order to qualify for a federal grant.<sup>5</sup>

### **4. Does our religious organization have to form a special nonprofit organization in order to receive federal funding?**

In general, no. There is no general federal requirement that an organization incorporate or operate as a nonprofit or obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code in order to receive federal funds. However, some federal, state, or local programs may impose such a requirement.

### **5. Can money from a government grant fund religious activity?**

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<sup>1</sup> Participation in Department of Health and Human Services Programs by Religious Organizations, 69 Fed. Reg. 42586 (July 16, 2004) (amending 45 CFR Parts 74, 87, 92 and 96).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 42587.

<sup>4</sup> <http://answers.hhs.gov/categories/70>.

<sup>5</sup> *Id.* See also 42 U.S.C. § 604a.



The United States Supreme Court has said that *direct* government assistance may not be used to support "inherently religious" activities. This means a faith-based organization may not use any *direct* federal assistance to fund worship, religious instruction, or proselytization.<sup>6</sup>

This does not mean the organization may not have religious activities. It simply means an organization may not use taxpayer dollars to *directly* fund inherently religious activities.<sup>7</sup> If an organization receives direct government funds, any inherently religious activities must be privately funded, separate from the government-funded services, and voluntary. Therefore, faith-based organizations that receive direct governmental funds should take steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer.<sup>8</sup> Additionally, although an organization may invite program beneficiaries to join in its inherently religious activities, it must be clear to the beneficiaries that participation in such religious activity is voluntary and will have no bearing on receipt of the government-funded social service.

This is not to be confused with the *indirect* funding of religious instruction. When a private citizen receives a government voucher to be used for some secular purpose, such as paying for tuition at a private school, it may use that voucher at a religious institution.<sup>9</sup> This is so even if the school engages in religious activities and instruction. The U.S. Supreme Court has said that such funding is not the *direct* funding of religious instruction, as the decision to use the voucher at a religious institution was made by the private choice of an individual.<sup>10</sup>

**6. If our organization participates in a government grant program, will we lose the ability to retain employees based on religious criteria?**

No. This is the whole point of the faith-based initiative – to protect the right of religious organizations to be able to compete for government grants without being discriminated against due to its religious beliefs.<sup>11</sup> In order for a religious organization to define or carry out its mission, it must be able to take religion into account in hiring staff.

There is no general federal law that prohibits faith-based organizations that receive federal funds from hiring on a religious basis. Neither does Title VII of the Civil Rights Act of 1964, which applies regardless of whether an organization receives federal funds, prohibit faith-based organizations from hiring on a religious basis. This Act protects Americans from employment

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<sup>6</sup> See, e.g., *Witters v. Wash. Dep't of Serv. for Blind*, 474 U.S. 481 (1986).

<sup>7</sup> *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *American Jewish Congress v. Corporation for National and Community Service*, 399 F.3d 351 (D.C. Cir. 2005); *Freedom from Religion Foundation, Inc. v. McCallum*, 324 F.3d 880 (7th Cir. 2003).

<sup>8</sup> See, e.g., 42 U.S.C. § 604a and Participation in Department of Health and Human Services Programs by Religious Organizations, 69 Fed. Reg. 42586 (July 16, 2004) (amending 45 CFR Parts 74, 87, 92 and 96).

<sup>9</sup> *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

<sup>10</sup> *Id.* See also *Mitchell v. Helms*, 530 U.S. 793 (2000).

<sup>11</sup> <http://answers.hhs.gov/categories/69>.



discrimination based on race, color, religion, sex, national origin, age, and disability. But the Civil Rights Act also explicitly recognizes the fundamental rights of faith-based organizations to hire employees who share their religious beliefs.<sup>12</sup> The U. S. Supreme Court unanimously upheld this special protection for faith-based groups in 1987, and it has been the law since then. Thus, a Jewish organization can decide to hire only Jewish employees, a Catholic organization can decide to hire only Catholics, and so on, without running into problems with the Civil Rights Act.

In general, a faith-based organization retains this exemption under the law, even if it receives federal, state, or local financial assistance. However, some federal laws and regulations, as well as state and local laws, may prohibit discrimination on the basis of religion in hiring. So, which law prevails for a faith-based organization? If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled, under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, to receive federal funds and yet maintain that hiring practice, even if the law creating the funding program contains a general ban on religious discrimination in employment.

However, while a faith-based organization may be entitled to consider the religion of a job applicant, no federal grantee may discriminate among whom it serves on the basis of religion.<sup>13</sup> All grantees must serve otherwise qualified persons in need of the funded social service, regardless of the beneficiaries' religion, and regardless of whether or not the beneficiaries participate in any religious activity.

**7. Can federal funds be used to purchase religious materials?**

No. Faith-based organizations may not use federal funds to directly purchase religious materials – such as the Bible, Torah, or other religious or scriptural materials.<sup>14</sup>

**8. Can we share our religious beliefs with participants of the government grant program?**

Yes, but not as a part of the program funded by the government. Grant funds may not be used for inherently religious activities such as worship, prayer, proselytizing, or devotional Bible studies.<sup>15</sup>

**9. Can we require participants in the government grant program to attend church in order to receive benefits under the government grant program?**

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<sup>12</sup> 42 U.S.C. §12113(d)(1) and 42 U.S.C. §2000e-1(a).

<sup>13</sup> Participation in Department of Health and Human Services Programs by Religious Organizations, 69 Fed. Reg. 42586 (July 16, 2004) (amending 45 CFR Parts 74, 87, 92 and 96).

<sup>14</sup> *Mitchell v. Helms*, 530 U.S. 793 (2000).

<sup>15</sup> *Id.* See also Participation in Department of Health and Human Services Programs by Religious Organizations, 69 Fed. Reg. 42586 (July 16, 2004) (amending 45 CFR Parts 74, 87, 92 and 96).



No.<sup>16</sup>

**10. Are there any government grants specifically set aside for faith-based organizations?**

No, there are no special grants just for FBO's. Rather, the faith based initiative seeks to provide access for faith-based and community groups to apply for federal grants or grants from entitlement communities without being discriminated against due to their religious nature. The focus of the program is to "level the playing field" so that all non-profit groups, including faith-based groups, are treated equitably and fairly.<sup>17</sup> It is important to understand that faith-based and community groups are "competing" for federal or local grants, and must have the know-how and the capacity to deliver the services or product for which the funding is intended.

**11. What will happen if we violate any of the grant rules or requirements specified in the grant?**

If you violate the requirements specified in your grant or otherwise improperly use the funds you receive, you may be subject to legal action. Among other things, you may lose your grant funds, be required to repay the funds you received, and pay any damages that might be awarded through court action.<sup>18</sup> If an organization uses its funds fraudulently, it could be subject to criminal prosecution.<sup>19</sup>

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<sup>16</sup> 69 Fed. Reg. 42586. See also 42 U.S.C. § 604a; *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *American Jewish Congress v. Corporation for National and Community Service*, 399 F.3d 351 (D.C. Cir. 2005); *Freedom from Religion Foundation, Inc. v. McCallum*, 324 F.3d 880 (7th Cir. 2003).

<sup>17</sup> <http://www.hhs.gov/fbci/regulations/index.html>.

<sup>18</sup> [http://answers.hhs.gov/search/results?category\\_id=65&q=fraud](http://answers.hhs.gov/search/results?category_id=65&q=fraud).

<sup>19</sup> <http://oig.hhs.gov/fraud.asp>.