

Frequently Asked Questions
Partnerships with Faith-Based and Other Neighborhood Organizations
28 C.F.R. pt. 38

1. What is the Justice Department’s regulation, “Partnerships with Faith-Based and Other Neighborhood Organizations” (also known as Part 38 and formerly known as “Equal Treatment for Faith-Based Organizations”)?

On April 4, 2016, the U.S. Department of Justice (“Department” or “DOJ”) issued the regulation entitled [Partnerships with Faith-Based and Other Neighborhood Organizations](#), 28 C.F.R. pt. 38 (Part 38). The regulation implemented [Executive Order 13279](#), as amended by [Executive Order 13559](#), and revised the previous 2004 rule, Equal Treatment for Faith-Based Organizations, which had implemented an earlier version of Executive Order 13279 and also appeared at 28 C.F.R. pt. 38. Part 38 prohibits Department-funded social service programs from discriminating on the basis of religion in the delivery of services or benefits, and ensures that faith-based or religious organizations are able to participate in such programs on an equal basis with other organizations. The regulation also allows beneficiaries to request an alternative provider if they object to the religious character of a service provider that receives direct financial assistance from the Department and places certain notice and referral requirements on faith-based or religious organizations that receive direct assistance.

2. Does the new Part 38 retain some elements of the previous regulation?

Yes. Part 38 retains many of the general principles of the previous regulation, including the following:

- Recipients of direct financial assistance from the Department must not discriminate on the basis of religion in the delivery of services or benefits in Department-funded social service programs;
- Recipients of direct financial assistance from the Department cannot use Department funding to support religious activities such as worship, religious instruction, and proselytizing;
- Recipients of direct financial assistance from the Department that engage in religious activities must ensure that (1) the activities are separate in either time or location from Department-funded activities; and (2) the beneficiaries¹ of the DOJ-funded activities freely choose to participate in the recipients’ religious activities; and
- Faith-based or religious organizations are eligible to participate in Department programs on the same basis as other organizations and, in doing so, shall retain their independence and may continue to carry out their missions, including the definition, practice, and expression of their religious beliefs.

¹ As used in this document, the term “beneficiary” includes the term “prospective beneficiary.”

3. What are significant changes in the new Part 38?

Revisions to Part 38 include the following:

- The new rule more clearly distinguishes the responsibilities of organizations that receive “direct” financial assistance from the Department and the responsibilities of organizations that receive “indirect” financial assistance from the Department. 28 C.F.R. §§ 38.3(a) and (b), 38.5.
- The new rule prohibits an organization that receives direct financial assistance from the Department from using DOJ funds to support “explicitly religious activities.” The previous rule had a similar prohibition, but used the term “inherently religious activities.” The change clarifies that the prohibition is against external, observable activities and not against the religious motivation a funded organization may have in providing services. 28 C.F.R. § 38.5(a).
- The new rule obligates faith-based or religious organizations that receive direct financial assistance from the Department to provide certain notices to beneficiaries and to refer beneficiaries to alternative service providers if the beneficiaries object to the organization’s religious character. 28 C.F.R. § 38.6(c) and (d).
- The new rule clarifies that an aggrieved party who believes that an organization has violated this rule may report that violation by contacting or [filing a written complaint with the Office for Civil Rights \(OCR\)](#) at the Office of Justice Programs or with the intermediary agency that awarded funds to the organization and that OCR has primary enforcement responsibility for the rule. 28 C.F.R. §§ 38.6(c)(1)(v), 38.8.

4. What is religious discrimination under Part 38?

Part 38 prohibits recipients of DOJ financial assistance from discriminating in providing services or benefits in a Department-funded social service program based on “religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.” 28 C.F.R. § 38.5(c). For example, a Department-funded after-school program for youth cannot limit admission to applicants who are members of a particular faith. Similarly, a Department-funded prison system cannot deny privileges to individuals in custody who would otherwise be eligible for those privileges because the individuals identify as atheists.

5. What is the difference between direct and indirect federal financial assistance?

Direct federal financial assistance refers to situations where DOJ or an intermediary selects an organization and then either purchases services (e.g., through a contract) from the organization or awards funds (e.g., through a grant or cooperative agreement) to the organization to perform services. 28 C.F.R. § 38.3(a)(1).

Indirect federal financial assistance refers to situations where a beneficiary receives a voucher or some other form of payment from DOJ or an intermediary and then uses the voucher to obtain services from an organization that the beneficiary chooses. Federal financial assistance is indirect when (1) the government program providing the voucher or other payment is neutral toward religion, (2) the organization receives financial assistance based on the beneficiary's decision, and (3) the beneficiary has at least one adequate secular option. 28 C.F.R. § 38.3(b).

6. Are there different obligations for recipients of direct DOJ financial assistance and recipients of indirect DOJ financial assistance?

Yes. In providing services, no recipient of DOJ financial assistance may discriminate against a beneficiary based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. A faith-based or religious organization that receives indirect DOJ financial assistance, however, does not need to modify its religious activities to accommodate a beneficiary who freely chooses to spend the indirect aid (e.g., a voucher) on the organization's program. 28 C.F.R. § 38.5(c). This means that, among other things, indirectly funded organizations are not bound by the restrictions on explicitly religious activities set forth in section 38.5, and the notice and referral requirements under section 38.6(c) and (d) do not apply to them.

7. What are “explicitly religious activities”?

Part 38 prohibits the use of direct federal financial assistance to support or engage in “explicitly religious activities,” which include “activities that involve overt religious content such as worship, religious instruction, or proselytization.” 28 C.F.R. § 38.5(a) and (b). Other examples of explicitly religious activities include devotional exercises, production or dissemination of devotional guides or other religious materials, or counseling in which counselors encourage beneficiaries to accept religious teachings or discourage them from doing so. More specifically, in the context of Department-funded social services, distribution of a devotional booklet in the context of a directly funded substance abuse program or prisoner reentry program, or the provision of a [12-Step Alcoholics Anonymous program](#), are examples of social service activities that are explicitly religious. While it is not feasible to develop a comprehensive list of all “explicitly religious activities,” each of these is an example of an activity that is not religiously neutral because it promotes or endorses religion to beneficiaries.

8. Does the analysis of “explicitly religious activities” have to be consistent with the U.S. Constitution?

Yes. Application of the prohibition against using direct federal financial assistance to conduct explicitly religious activities must be consistent with the First Amendment to the U.S. Constitution, which among other things, prevents the government from promoting or sponsoring religion and protects privately initiated religious expression and activities from government interference and discrimination. With the exception of activities that can be publicly funded consistent with the Establishment Clause of the First Amendment, such as the provision of chaplaincy services, this means that a recipient's staff members carrying out programs supported by direct DOJ financial assistance, as well as the materials disseminated by staff in those programs, must be neutral in the treatment of religion. Neither staff members, when acting on

behalf of such programs, nor materials used in those programs, should promote, endorse, or favor religious beliefs or disparage them in any way. Further, in those programs, recipients should not express a judgment with regard to religious beliefs or seek to influence the beliefs of participants with respect to religion.

9. What is the responsibility of recipients to ensure that social service programs supported by direct financial assistance from the Department are not engaging in explicitly religious activities?

When DOJ financial assistance supports a local social service program, program administrators should be aware that the prohibition against the use of direct DOJ financial assistance for explicitly religious activities applies to the behavior, speech, and materials of the program's administrators, officials, instructors, or anyone directing the program. The prohibition does not generally apply to the activities of persons who participate in but do not direct the program.

For example, in a support group for victims of crime operated by a faith-based organization and funded by direct assistance from the Department, members of the group may discuss the challenges of coping with the aftermath of a crime in religious terms. It would be impermissible, however, for the leader of the support group, who is on the staff of the DOJ-funded organization, to endorse or denigrate the religious perspectives of support group members.

10. Are there examples of when the staff or materials in a social service program supported by direct financial assistance from the Department may refer to religion without violating the prohibition against engaging in “explicitly religious activities”?

Yes. References to religion made by program administrators, instructors, or officials should be viewed in their full context to determine whether they are neutral toward religion. Staff in programs supported by direct DOJ financial assistance may not provide sectarian religious instruction, but, when doing so is consistent with the purposes of the program, they may refer to religion in a variety of ways. For example, in a healthy marriage program or in a responsible fatherhood program, staff may note that some spouses share religious convictions and practice their faith as a family or that couples who do not share the same faith may need to discuss constructive ways in which to handle their religious differences. Instructors in a juvenile justice program may note that for some youths, values may spring from religious beliefs and traditions. In conflict mitigation programs, staff may note that principles of nonviolence are anchored in the teachings of many religious traditions. Just as public schools may teach about religion, such as the history of religion, comparative religion, literary analysis of the Bible and other scripture, and the role of religion in the history of the United States and other countries, staff in DOJ-supported programs may discuss religion in such ways. In other words, staff may not inculcate or discourage a religious practice or belief, but it is permissible for staff to acknowledge the role of religion in the lives of some individuals and in certain communities.

11. May the staff lead a discussion in a social service program supported by direct financial assistance from the Department in which the beneficiaries refer to their religious beliefs?

Yes. The basic principle is that beneficiaries may express their religious beliefs, while the staff must remain neutral. When social service providers, schools, or other programs supported by

direct DOJ financial assistance permit beneficiaries to express their views, and staff neither invite nor endorse specifically religious speech, then the speech is not attributable to the government, and expression by beneficiaries is not only permissible but also protected.

Here follow three examples illustrating how staff members and program beneficiaries may refer to religion in DOJ programs that receive direct financial assistance:

(a) In a group discussion about life experiences during a DOJ-funded prisoner reentry program, beneficiaries may on their own initiative talk about how religion is important in their lives. Their speech is permissible and protected. On the other hand, if the group facilitator initiates a discussion about the role of religion in rehabilitation, chooses individuals to speak about their experiences from a religious perspective, or avoids calling on participants who view the world from a secular perspective, the facilitator's behavior would be impermissible because it is not neutral toward religion.

(b) An instructor leading a program on values and character development for young people may acknowledge a participant's religious beliefs in a manner that is neutral toward religion. If students in the class comment on their religious beliefs, the instructor may acknowledge that many religious traditions have important teachings on ethics and that an individual's religious background may play an important role in making life choices. It would be inappropriate, however, for the instructor to say or imply that religion is irrelevant to the topic, as such a statement would violate the principle of neutrality toward religion. Depending on the time permitted and the level of interest expressed by the students, the instructor may explore a variety of religious and secular perspectives on topics that the class discusses, provided that the instructor does not suggest that certain views are preferable to others. If a student expresses interest in having a discussion with a religious expert, the instructor may encourage the student to speak to a member of the clergy of the student's choice. Similarly, if a student expresses an interest in having a discussion with an expert in any other field, the instructor may encourage the student to identify appropriate consultants and arrange to speak to them.

(c) A facilitator in a marriage promotion program may use a curriculum designed to generate discussions between couples to help them discern whether they have compatible beliefs on a variety of issues, including religion. The facilitator may ask questions but must remain neutral. The facilitator cannot encourage or discourage participants' adoption of religious beliefs or engagement in religious practices.

12. If an instructor in a social service program supported by direct financial assistance from the Department provides students or other program beneficiaries with an assignment to give an oral or written report, should the instructor prohibit participants from expressing views that either support or criticize religion?

No. Students and other beneficiaries may express their beliefs about religion in homework, artwork, and other written and oral assignments. Evaluating home and classroom work should follow pedagogical standards of substance and relevance that the school or service provider has identified. For example, if a class assignment is to write a poem and a student writes a poem in the form of a prayer, the instructor should judge the poem on academic standards, such as literary quality, and neither penalize nor reward the student based on the poem's religious content.

13. If faith-based or religious organizations invite guest speakers to talk to the beneficiaries in their programs supported by direct financial assistance from the Department, do they need to prohibit the guest speakers from referring to religion?

No. It is important, however, to remember that the federal government, and the programs that it supports, must be neutral toward religion. When a program receiving direct DOJ financial assistance invites speakers to address program participants, it should neither favor nor disfavor religious speech. To adhere to the neutrality principle, there are a number of factors that a recipient of direct DOJ financial assistance might consider in inviting speakers to a forum that the recipient sponsors: for example, whether to establish at the beginning of the program or in program materials that the recipient does not necessarily endorse the perspectives of each speaker, whether to invite a panel of speakers rather than a single speaker to offer a variety of viewpoints, and whether to invite other speakers at other times to express different viewpoints. Furthermore, organizations need to take special care in addressing members of vulnerable populations. For example, in selecting speakers to address program participants who are minors, recipients should be mindful of parental concerns and aware that children may be more vulnerable to coercion than adults.

14. Are there circumstances in which persons attending a program supported by direct financial assistance from the Department may choose to pray on their own during the program?

Yes. Attending a DOJ-supported program does not affect an individual's right to the free exercise of religion, including the right to pray on one's own. As a general matter, program beneficiaries may engage in prayer, subject to the same rules designed to prevent material disruption of the program that are applied to any other private speech.

15. What are some practices that organizations supported by direct financial assistance from the Department should avoid to ensure that they are in compliance with Part 38 by being neutral toward religion?

Some of the practices that organizations supported with direct DOJ assistance should avoid to ensure that they are neutral toward religion include the following:

- Establishing selection criteria that have the effect of discriminating against beneficiaries based on religion;
- Limiting outreach, recruitment efforts, or advertising for DOJ-supported social service programs to target or avoid populations based on religion;
- Adopting registration procedures that include religious inquiries or references; and
- Conducting program activities that promote, endorse, or favor religious beliefs or dissuade program participants from holding religious beliefs.

16. Can a faith-based or religious organization supported by direct financial assistance from the Department carry out two similar social service programs, one supported by DOJ funds and another supported by private funds?

In addition to any worship or religious services that faith-based or religious organizations may conduct separately from a social service program directly funded by the Department, faith-based or religious organizations may also carry out separate, privately funded programs that include explicitly religious activities or content. In some cases, an organization may elect to carry out a separate, privately funded program with explicitly religious activities that is similar in nature to the government-funded program. For example, a church may carry out two mentoring programs, one that is privately funded and explicitly religious and another that is directly supported by DOJ funds and free of explicitly religious content. In this instance, the church must be clear that its explicitly religious activities are separate and distinct from any DOJ-supported program and that participation in any religious activities is completely voluntary for beneficiaries of the DOJ-supported program.

17. Are there some social service programs supported with direct financial assistance from the Department, such as chaplaincy services, in which a staff person could engage in explicitly religious activities?

The restriction against the use of direct DOJ financial assistance to support explicitly religious activities might not apply to some programs where funds are provided to chaplains to work with people in detention facilities, or where funds are provided to religious or other organizations for programs in detention facilities that assist chaplains in carrying out their duties. 28 C.F.R. § 38.2(c). If you have questions about whether a DOJ-supported program is exempt from the prohibition against the use of direct DOJ financial assistance for explicitly religious activities, you should contact your DOJ program office or, if applicable, the intermediary that provided you with direct DOJ financial assistance.

18. How do faith-based or religious organizations supported by direct financial assistance from the Department ensure that program beneficiaries can distinguish between privately sponsored explicitly religious activities and federally funded activities?

Some of the ways that DOJ-funded faith-based or religious organizations can ensure that program beneficiaries can clearly distinguish between privately sponsored explicitly religious activities and DOJ-funded activities include the following:

- Creating separate and distinct names for the programs;
- Creating distinct appearances for the materials used to promote each program;
- Establishing separate registrations for the programs; and
- Promoting only the DOJ-supported program in materials, websites, or commercials purchased with any portion of direct federal financial assistance.

Websites with explicitly religious content may include a link to a page promoting the DOJ-supported program. Funded faith-based or religious organizations may not, however, use direct DOJ financial assistance to support the creation or maintenance of a web page with information about a program with explicitly religious activities. A faith-based or religious organization may, of course, use federal funds to create and maintain a web page with information about a DOJ-supported program. If, however, the web page with information about a DOJ-supported program contains a link to explicitly religious activities that the faith-based or religious organization offers, the link should include a statement noting that the linked content is separate from the program supported by direct financial assistance from the Department, privately funded, and purely voluntary for program beneficiaries.

19. What should a faith-based or religious organization do if it has considered whether the materials for its DOJ-supported program are neutral toward religion, but it is still not certain?

If staff members of a faith-based or religious organization have reviewed the materials to be used in a program that receives direct DOJ financial assistance but still have concerns as to whether the materials are neutral toward religion, they may contact their DOJ program office through the program's project officer, contracting officer, or other responsible federal official. DOJ recipients may also contact the Office for Civil Rights at the Office of Justice Programs for guidance.

20. How do faith-based or religious organizations ensure the separation of explicitly religious presentations from presentations supported with direct DOJ financial assistance?

Recipients of direct DOJ financial assistance must implement measures to separate the presentation of any program with religious content from the presentation of the DOJ-supported program in time or place in a way that it is clear that the two programs are distinct and that participation in presentations with explicitly religious content is voluntary for beneficiaries attending the DOJ-supported presentation. 28 C.F.R. § 38.5(a). When separating the two programs in time, but presenting them in the same room, the service provider must ensure that one program completely ends before the other program begins.

Some of the ways to separate presentations include the following:

- The funded service provider may separate the presentations by holding them at different sites or on different days.
- If the presentations take place in the same room at the same site, at completely different times, the funded service provider may separate the presentations through such means as
 - having sufficient time between the two presentations to vacate the room, turn down the lights, leave the stage, and so forth, to indicate the conclusion of the first program before beginning the second, or
 - completely dismissing the participants of the earlier program.

- If the presentations take place in different rooms at the same site, at the same time, the funded service provider may separate the presentations through such means as
 - completely separating areas where registration for the presentations takes place, or
 - completely separating areas where the presentations take place, such as by holding presentations in rooms located in different hallways or on different floors.

If an organization offers both DOJ-supported activities and privately funded explicitly religious activities, the organization must accentuate the separation between them. Organizations need to take special care in distinguishing between DOJ-supported activities and privately supported explicitly religious activities when serving vulnerable populations, such as children.

21. Can faith-based or religious organizations that operate a program supported by direct financial assistance from the Department invite program beneficiaries to participate in an explicitly religious activity?

After the program supported with direct DOJ financial assistance has ended, a staff person of the funded faith-based organization may provide a brief, non-coercive invitation to program participants to attend a separate religious program. The demarcation between the DOJ-supported program and the religious program must at all times be clear. The invitation must emphasize that the religious program is a separate program from, and not a continuation of, or a complement to, the DOJ-supported program. It also must be clear that participants are not required to attend the separate religious program and that participation in the DOJ-supported program is not contingent on participation in other programs sponsored by the faith-based organization.

22. If a faith-based or religious organization operates a separate and distinct religious program for youth that differs from the youth program it operates with direct DOJ support, should the organization obtain parental consent for the youth in the DOJ-funded program to participate in the other program?

Yes. If a program supported with direct DOJ financial assistance serves youth, staff in the program generally should obtain prior parental consent for the youth to participate in any separate and distinct religious activities. Parental consent will help ensure that participation is voluntary. The faith-based or religious organization generally should take care not to have present youth who have not received parental consent when conducting separate and distinct religious activities.

23. Are faith-based or religious organizations responsible for demonstrating that direct federal funds are being used only for federally supported programs?

Yes. Recipients of direct DOJ financial assistance must be able to demonstrate that federal funds are being used only for federally supported activities. Some of the ways to demonstrate that

federally funded activities are being conducted separately from privately funded religious activities include the following:

- Using time sheets that require staff members to track their work hours, indicating the hours spent on federally supported activities and the hours spent on privately funded religious activities.
- Showing cost allocations for all items and activities that involve both federally supported and non-federally supported programs, including staff time, equipment, or other expenses, such as travel to event sites. Appropriate cost allocation includes the following examples:
 - If the staff in the federally supported program travels to a site where the organization conducts both a federally supported program and a privately funded religious program, charges to the federally supported program for the travel costs (e.g., gas, lodging, and other related expenses) should be apportioned based on the time spent on the federally supported program in comparison to the time spent on the religious program. If a third of the staff's time was spent on the federally funded program, the recipient may charge a third of the travel expenses to the federally funded program.
 - If a recipient uses an electronic device 30% of the time for the federally supported program, the recipient should document the device's use through clear recordkeeping. The recipient may charge only 30% of the cost of the electronic device to the federally supported program.

See [2 C.F.R. § 200.430](#) (Cost Principles—Compensation—Personal Services); [48 C.F.R. § 31.201–4\(b\)](#) (Contracts With Commercial Organizations—Determining Allocability).

24. Can DOJ-funded faith-based or religious organizations maintain their religious identity?

Yes. While DOJ-funded faith-based or religious organizations must ensure that programs directly supported by the Department are religiously neutral and that they will not use direct federal funds to support explicitly religious activities, various protections exist to ensure that faith-based or religious organizations do not have to change their religious identities after receiving a DOJ award. Faith-based or religious organizations that receive DOJ financial assistance to support social service programs retain their independence from federal, state, and local governments. They may carry out their mission, including the definition, practice, and expression of religious beliefs. Funded faith-based or religious organizations retain authority over internal governance and may retain religious terms in their names, select board members on a religious basis, and include religious references in mission statements and other governing documents. 28 C.F.R. § 38.5(b).

25. Do faith-based or religious organizations have to alter the space where they hold activities supported with direct DOJ financial assistance?

No. A DOJ-funded faith-based or religious organization may use space in its facilities for federally funded activities without removing or altering scriptures, icons, religious symbols, or religious messages. 28 C.F.R. § 38.5(b).

26. May a social service provider that has received direct financial assistance from the Department to conduct presentations that are neutral toward religion accept an invitation to present at a religious setting such as a church or church-affiliated summer school as a part of the DOJ-funded program?

Yes. A funded social service provider should handle requests for presentations about the DOJ-funded program in an evenhanded fashion that neither favors nor disfavors religion, a particular religious institution, or the religious affiliation of those in attendance. Project services should be offered in a religiously neutral way, and decisions about where to offer presentations or provide services should be made based on criteria that are relevant to the program, such as efficiency, need, public requests, or geographic balance, rather than on any criteria that are related to religion.

27. May faith-based or religious organizations receiving direct financial assistance from the Department provide services in the same facility that houses a religious library?

Yes. The availability of religious texts in a library, however, may present a legal concern if the administrators, instructors, or other officials in the DOJ-funded program require persons who receive services supported by direct federal assistance to use the reading materials in an explicitly religious way.

28. May an organization supported with direct financial assistance from the Department provide applicants and beneficiaries with a list of other available programs that includes programs with explicitly religious content?

Yes. If the federally funded organization has developed a list of “available programs,” rather than recommended programs or referrals, based on religiously neutral criteria, such as service providers in the immediate geographic area, then the list may include programs with secular content and programs with explicitly religious content.

29. What elements should a faith-based or religious organization that receives direct financial assistance from the Department include in a written notice to beneficiaries?

Faith-based or religious organizations providing social services under a program supported by direct financial assistance from the Department must provide written notice to beneficiaries regarding the protections that the beneficiaries have. The notice must include the following statements:

- The organization may not discriminate against beneficiaries 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.

- The organization may not require beneficiaries to attend or participate in any explicitly religious activities that the organization offers, and any participation by beneficiaries in the organization’s explicitly religious activities must be purely voluntary.
- The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct federal financial assistance.
- If a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary does not object.
- Beneficiaries may report an organization’s violation of these protections by contacting or filing a written complaint with the Office for Civil Rights at the Office of Justice Programs or the intermediary agency that awarded DOJ financial assistance to the organization.

28 C.F.R. § 38.6(c).

30. Is there a model written notice that faith-based or religious organizations supported by direct financial assistance from the Department can use to inform beneficiaries of their protections under this regulation?

Yes. Appendix A of Part 38 (28 C.F.R. pt. 38, app. A) contains the following notice that DOJ-funded faith-based or religious organizations may use to inform beneficiaries of the protections available to them:

Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you 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;
- We may not require you to attend or participate in any explicitly religious activities that we offer, and your participation in these activities must be purely voluntary;

- We must separate in time or location any privately funded explicitly religious activities from activities supported with direct Federal financial assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection; and
- You may report violations of these protections to the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights or to [name of intermediary that awarded funds to the organization].

We must give you this written notice before you enroll in our program or receive services from the program.

31. Are there other considerations that a funded faith-based or religious organization should take into account in providing beneficiaries notice of the protections available to them?

For beneficiaries who cannot read or understand the notice of protections based on limited English proficiency (“LEP”) or disability, organizations must take the necessary steps to communicate by providing translation or interpretation services, accessible alternative formats, or appropriate counseling. Funded organizations should be aware of their responsibility under Title VI of the Civil Rights Act of 1964, as amended, to provide language-access services to LEP individuals and should refer to the Department’s [Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#). Funded organizations should also be aware of their responsibility to provide appropriate aids or services to people with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, which may require funded organizations to provide interpretation or other services to deaf or hard-of-hearing individuals or braille, large-print, or taped materials to individuals who are blind or have impaired sight. For further information, see the Department’s regulation entitled [Nondiscrimination Based on Handicap in Federally Assisted Programs—Implementation of Section 504 of the Rehabilitation Act of 1973](#), 28 C.F.R. pt. 42, subpt. G. Funded service providers may also want to develop a policy on how best to inform illiterate beneficiaries of their protections.

32. What does it mean for a beneficiary to object to the “religious character” of an organization?

Part 38 allows beneficiaries to object to the “religious character” of a service provider that receives direct financial assistance from the Department. For example, a beneficiary may object to participating in a DOJ-funded counseling program because a faith-based organization staffs and administers the program. The objection relates to the religious character of the service provider.

Notably, an objection to the “religious character” of a funded organization is distinguishable from other objections or claims. An objection to an organization’s religious character is not equivalent to an objection to the religion of a particular employee of the funded organization; instead, the objection must be against the service provider as an institution. The objection is also not the same as a religious discrimination claim, which regards whether a funded organization is providing equitable services to a beneficiary regardless of the beneficiary’s religion. The objection is also not the same as a concern about potential violations of the protections under this rule, such as a funded organization properly separating explicitly religious activities from the federally funded program and ensuring that program beneficiaries freely choose to participate in the explicitly religious activities.

33. If a beneficiary objects to the religious character of a faith-based or religious organization that receives direct financial assistance from the Department, in what form must the objection be made?

A beneficiary may object orally or in writing to the religious character of a DOJ-funded organization. The funded organization then must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative service provider to which the beneficiary has no objection based on the alternative provider’s religious character. If the organization makes a referral to an alternative provider, the organization must maintain a record of that referral; when the organization is unable to identify an alternative provider, the organization must not only maintain a record, but must also promptly notify the awarding entity. 28 C.F.R. § 38.6(d).

In addition to providing beneficiaries with the required written notice of beneficiary protections, modeled in Appendix A of Part 38 (28 C.F.R. pt. 38, app. A), DOJ encourages, but does not obligate, organizations to provide beneficiaries with a referral request form that provides a way for beneficiaries to state their objections clearly, at the same time as beneficiaries are given the required written notice of beneficiary protections. Organizations may use a referral request form based on the model in Appendix B of Part 38 (28 C.F.R. pt. 38, app. B):

Beneficiary Referral Request

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified on the Written Notice of Beneficiary Protections. If you object, we will make reasonable efforts to refer you to another service provider. We cannot guarantee, however, that in every instance, an alternative provider will be available. With your consent, we may follow up with you or the organization to which you were referred to determine whether you have contacted that organization.

Please check if applicable:

() I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

() Please follow up with me or the service provider to which I was referred.

Name:

Best way to reach me (phone/address/email):

() Please do not follow up.

34. For cases in which services are provided in person, what is the responsibility of a faith-based or religious organization that receives direct financial assistance from the Department to identify an appropriate alternative provider once a beneficiary objects to the “religious character” of the organization?

In all cases involving in-person services, when a beneficiary objects to the religious character of a faith-based or religious organization that receives direct financial assistance from the Department, the organization must promptly undertake reasonable efforts to refer the beneficiary to an alternative provider to which the beneficiary does not object based on the provider’s religious character. The alternative provider must offer services similar in substance and quality to those of the referring organization; it must have the capacity to accept the beneficiary; and it must be in reasonable geographic proximity to the location where the beneficiary is receiving or would receive services (except for services provided by telephone, Internet, or similar means). 28 C.F.R. § 38.6(d)(3). Reasonable geographic proximity is not just a measure of distance, as it may also depend on a number of circumstances, including the services provided and the transportation options available to the beneficiary.

35. When a beneficiary objects to the religious character of a faith-based or religious organization that receives direct financial assistance from the Department, and requests an alternative provider, can the organization discharge its referral obligation by notifying the beneficiary that it is not aware of any alternative providers without having first engaged in an affirmative effort to identify alternative providers?

No. If the funded faith-based or religious organization is not already aware of an alternative provider acceptable to the beneficiary, the organization must undertake reasonable, good-faith efforts to identify an alternative provider. If the funded organization is unable to identify an alternative provider, it must promptly notify the awarding agency (i.e., the DOJ program office or the intermediary that provided federal financial assistance to the faith-based or religious organization) and keep a record of the objection and consultation.

36. What is the responsibility of an “awarding agency” in assisting a faith-based or religious organization in finding an alternative provider when a beneficiary objects to the “religious character” of an organization that receives direct financial assistance from the Department?

The awarding agency will determine whether there is a suitable alternative provider to which the funded faith-based or religious organization may refer the beneficiary. When an intermediary (i.e., an organization that receives a direct award from DOJ and then subawards DOJ resources to other organizations) receives a request for assistance in identifying an alternative provider, it may request assistance from DOJ program offices.

37. Do referrals of beneficiaries to alternative providers have to comply with applicable privacy laws?

Yes. In making a referral to an alternative provider, a funded faith-based or religious organization must comply with all applicable privacy laws and regulations. The same is true in following up with beneficiaries after making the referral. If a beneficiary refuses to provide contact information or otherwise does not consent to allow the referring organization to follow up, the organization should honor the beneficiary's decision.

38. Does the referral to an alternative provider mean that the alternative provider must be a secular agency?

No. In many cases, the alternative provider need not be a secular agency. If the beneficiary wants a secular provider, and a secular provider is available, the funded faith-based or religious organization must refer the beneficiary to the secular provider. 28 C.F.R. § 38.6(d)(2). But the funded faith-based or religious organization may also refer the beneficiary to another faith-based or religious organization that provides comparable services, if the beneficiary or prospective beneficiary has no objection to that provider based on its religious character, and the referring organization does not base its referral on agreement or disagreement with the religious character of the other organization. Thus, if the beneficiary objects to the religious character of the funded faith-based or religious organization, the organization should inquire whether the beneficiary has preferences in receiving services from faith-based or religious organizations or secular providers. To the extent possible, the funded faith-based or religious organization should honor the beneficiary's preferences.

39. Is the referring organization responsible for any additional costs that the beneficiary incurs as a consequence of being referred to an alternative provider?

No. The referring organization is under no obligation to subsidize transportation costs or other increased costs that the beneficiary incurs as a consequence of pursuing a referral to an alternative provider. When various alternative providers are available, the costs to the beneficiary may be a factor that organizations may take into account in making a referral.

40. What constitutes “reasonable efforts” to identify and refer the beneficiary to an alternative provider?

The rule requires the funded faith-based or religious organization to “promptly undertake reasonable efforts” to make a referral to a provider to which the beneficiary has no objection. “Reasonable efforts” will depend on the circumstances of each situation. When the nature of the service is urgent, or when alternative, unobjectionable providers are known to operate in close proximity, the funded faith-based or religious organization should be able to make a timely referral in a shorter period of time than when the nature of the service is not as urgent, or when alternative, unobjectionable providers are difficult to identify in reasonable geographic proximity.

Other considerations that may determine whether efforts to make the referral to an alternative, unobjectionable provider are “reasonable” include the distance from the referring organization, available transportation options, cost, and the availability of comparable services. When services

are offered by telephone, the referring organization should consider long-distance fees as a potential cost; when services are offered by the Internet, the referring organization should consider the beneficiary's Internet access.

41. What should a referring organization do to follow up with an objecting beneficiary?

The Department encourages the referring organization, when authorized to do so by the beneficiary, to determine whether the beneficiary has contacted the alternative provider. A beneficiary may choose not to have the referring organization follow up, an option that may be particularly important for victims of certain crimes such as domestic violence, dating violence, sexual assault, or stalking. The faith-based or religious organization should respect the beneficiary's decision.

42. Do the obligations of this rule apply to subgrantees (also called subrecipients or subawardees)?

Yes. Intermediaries (i.e., organizations that receive a direct award from DOJ and then subaward DOJ resources to other organizations) must ensure that all of their subgrantees are aware of the requirements of Part 38, and they must also monitor their subgrantees' compliance with the regulation. Subgrantees that are faith-based or religious organizations must retain records of all referrals and attempted referrals based on religious-character objections. On request, subgrantees must make their referral records available to the intermediary for review.

43. How should faith-based or religious organizations that receive direct financial assistance from the Department inform beneficiaries of their protections under this rule?

Whenever possible, faith-based or religious organizations should provide beneficiaries with written notice of their protections under this rule in the form of a handout *and* a prominent poster or placard in the service area. When the nature of the services or exigent circumstances prevent the funded faith-based or religious organization from providing either or both forms of written notice to beneficiaries prior to serving them, the organization must advise the beneficiaries of their protections at the earliest available opportunity. 28 C.F.R. § 38.6(c)(2).

44. In cases where faith-based or religious organizations that receive direct financial assistance from the Department have only brief interaction with beneficiaries, and beneficiaries receive what may be a one-time service from that organization, may the organization post the written notice of beneficiary protections in a prominent place rather than provide copies of the written notice to each beneficiary?

In such cases, the faith-based or religious organization may clearly post the written notice in a service area and forego distributing handouts of the written notice to beneficiaries. Organizations must still honor the beneficiary protections in Part 38, which include responding to beneficiary objections to the organization's religious character.

45. Must the notice to beneficiaries always be in writing?

No. When services are provided by telephone, the funded faith-based or religious organization may read a brief statement concerning beneficiary protections. One approach might be having a

staff person inform each caller that beneficiaries have certain protections because the provided services are supported with direct DOJ financial assistance. The staff person would then ask whether the caller would like more information about the protections. If the caller requests the information, the staff member must read the full notice over the telephone.

46. Must the faith-based or religious organization that receives direct financial assistance from the Department always give immediate notice to beneficiaries regarding their protections?

No. Under exigent circumstances, during which providing the notice of beneficiary protections would pose a risk to health or safety (e.g., a domestic violence hotline responding to a caller who needs immediate advice on remaining safe), the service provider may provide notice at the earliest available opportunity after addressing immediate health or safety needs. Service providers may also provide notice at the earliest available opportunity when the nature of the service makes advance notice impracticable.

47. When the only service provided by a faith-based or religious organization receiving direct financial assistance from the Department is to make referrals, must the organization provide notice to beneficiaries about the protections available under Part 38?

No. If a faith-based or religious organization receives direct financial assistance from the Department, but the only service the organization provides is making referrals, then it suffices for the organization simply to make referrals. If a referral is made to an organization that receives direct federal financial assistance and offers services beyond referrals, then that organization must provide notice to beneficiaries about the applicable protections.

48. Must the alternative provider receive direct federal financial assistance?

No. It is not necessary that the alternative provider receive direct federal financial assistance. If an alternative provider receiving federal financial assistance does not exist, or if the beneficiary objects to the religious character of an alternative provider receiving federal financial assistance, the funded faith-based or religious organization making the referral may refer the objecting beneficiary to an alternative provider that does not receive federal financial assistance. The alternative provider should be in reasonable geographic proximity to the location where the beneficiary is receiving or would receive services (except for services provided by telephone, Internet, or similar means), offer services similar in substance and quality to the referring organization, and have the capacity to accept the beneficiary.

49. If an organization that receives direct financial assistance from the Department considers itself to be faith-based but does not engage in any explicitly religious activities, must it still provide written notice of protections to beneficiaries?

Yes. Aside from the beneficiary protections related to a funded organization's explicitly religious activities, the notice informs beneficiaries that the funded organization must not discriminate against them in the delivery of services or benefits based on religion, that they can object to the religious character of the funded organization, and how they may report violations of Part 38.

50. Should governmental agencies making awards with DOJ financial assistance take into account a provider’s religious affiliation to avoid any objections based on a funded organization’s religious character?

No. In selecting service providers for funding, Part 38 prohibits DOJ, as well as state or local governments, from either favoring or disfavoring an organization based on the organization’s religious character, affiliation, or lack of religious affiliation. Decisions about awards of federal financial assistance must be free from political interference, or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religion, religious belief, or lack of religious belief.

51. Do intermediaries have an obligation to fund a secular organization if they fund a faith-based or religious organization?

No. Although intermediaries may serve as a resource to the DOJ-funded faith-based or religious organization to help it identify a comparable alternative service provider when a beneficiary objects to the organization’s religious character, intermediaries have no obligation to fund a secular organization when they fund a faith-based or religious organization. In the grantmaking process, an intermediary may not consider the religious or secular character of an applicant organization in making a grant award.

52. If a beneficiary objects to the religious character of a faith-based or religious organization that receives direct financial assistance from the Department, will an acceptable alternative provider always be available?

No. There is no guarantee that an acceptable alternative provider will always be available. A funded faith-based or religious organization must undertake reasonable efforts to find an alternative provider for a beneficiary who objects to the organization’s religious character, but there may be times when there is no acceptable alternative provider.

53. Does Part 38 apply to employment?

Part 38 mainly addresses the obligations that recipients of DOJ financial assistance have in delivering services or benefits, but it also addresses in a limited way a recipient’s employment practices. Part 38 states that a faith-based or religious organization that receives either direct or indirect financial assistance from DOJ does not forfeit its exemption under Title VII of the Civil Rights Act of 1964, which would otherwise prohibit religious discrimination in employment. 28 C.F.R. § 38.5(e).

Part 38 also notes that some DOJ program statutes (e.g., the Omnibus Crime Control and Safe Streets Act of 1968, as amended; the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; the Victims of Crime Act of 1984, as amended; and the Violence Against Women Act of 1994, as amended) have nondiscrimination provisions that prohibit recipients of financial assistance subject to these statutes from discriminating on the basis of religion in employment. Part 38 advises recipients to “consult with the appropriate Department program office to determine the scope of any applicable requirements.” 28 C.F.R. § 38.5(e). For information on how a funded faith-based organization may claim an exemption from a program statute’s general

prohibition against religious discrimination in employment, see “[Funding to Faith-Based Organizations](#)” on the Office for Civil Rights website.

54. What are Part 38’s effective and compliance dates for recipients of DOJ financial assistance?

For both current and future recipients of financial assistance from the Office of Justice Programs (OJP), the effective date of the revisions to Part 38 is May 4, 2016. For recipients of financial assistance from the Office on Violence Against Women (OVW) and the Office of Community Oriented Policing Services (COPS Office), the revisions to Part 38 go into effect when an organization receives a new award after May 4, 2016.

However, as discussed in the joint preamble of the final rule, the final regulation delays the date by which organizations will need to comply by 90 days to ensure sufficient time for social service providers to receive policy guidance or reference materials and answers to their questions. Accordingly, no recipient of financial assistance from the program offices set forth above will have to comply with the final regulations until July 5, 2016, and in some instances involving OVW and COPS Office funds, recipients need not comply with the final regulations until receipt of a new award.

If you have any questions related to the effective date of the revisions to Part 38, please consult your DOJ program manager.

55. How does one report a violation of the protections in Part 38 by a DOJ-funded organization?

Anyone who believes that a DOJ-funded organization is discriminating on the basis of religion in delivering services or benefits or is not complying with Part 38 in any other way may contact or file a written complaint with the Office for Civil Rights at the Office of Justice Programs or with the intermediary agency that awarded funds to the organization.

To file a complaint with the Office for Civil Rights, see <http://ojp.gov/about/ocr/complaint.htm>. The mailing address for the Office for Civil Rights is 810 7th Street, NW, Washington, DC 20531. The telephone number is 202.307.0690. One may send questions to the Office for Civil Rights at askOCR3@ojp.usdoj.gov.