

# Frequently Asked Questions Concerning the Participation of Faith-Based Organizations and their Prospective Beneficiaries in U.S. Department of Education’s Formula and Discretionary Grant Programs

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The following are answers to frequently asked questions (FAQs) concerning the participation of faith-based organizations in discretionary and formula grant programs that are administered by the U.S. Department of Education (Department). Although specific programs from across the Federal government are identified as examples in some of the answers, the principles are intended to be useful in similar program contexts at the Department.

## If you have questions that are not answered in this FAQ:

- Grantees, please consult the Education program contact assigned for your grant award. The Education program contact’s information is located on the Grant Award Notification (GAN).
- Prospective Grantees, if you have a question that is not addressed here and you do not have a grant from the Department but intend on applying for a grant, you should contact Department staff identified in the Notice Inviting Applications (sometimes referred to as the application notice) or the Department staff listed on the program office’s home page at ED.gov.

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## **Separation of Explicitly Religious Activities**

Faith-based organizations must separate explicitly religious activities from programs supported with direct financial assistance funds from the Department.

Therefore, a private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, must offer those activities separately in time or location from any programs or services supported by a grant from the Department, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the grant must be voluntary. See Title 34 of the Code of Federal Regulations (CFR), sections (§§) 75.52(c) (1) and 76.52(c) (1). (34 CFR 75.52 (c) (1) and 76.52 (c) (1))

The following questions are related to the separation of explicitly religious activities from Department-funded programs:

### **Explicitly Religious Activities**

**Q1:** In addition to worship, religious instruction, and proselytizing, what are some other examples of explicitly religious activities and materials that cannot be conducted or used as part of a grant or project activity?

**A1:** Other examples of explicitly religious activities and materials include devotional exercises, production or dissemination of devotional guides or other religious materials, and counseling in which counselors introduce religious content. More specifically, devotional booklets for a youth in an educational support program, or the provision of 12-step Alcoholics Anonymous booklets in a supportive services program, are examples that are explicitly religious. While it is not feasible to develop a comprehensive list of "explicitly religious activities," each of these are examples of activities of that are not religiously neutral because they promote or endorse religion to beneficiaries.

**Q2:** Are there examples of activities in which the grantee staff (that is staff of the organization who received grant funding from the Department) may refer to religion without violating the prohibition against "explicitly religious activities"?

**A2:** Yes. Any reference to religion should be viewed in its full context to determine whether the activity is neutral to religion, and whether there are instances in which religious references made by program administrators, instructors, or officials are neutral to religion. For example, grantee staff may not provide devotional religious instruction, but, where consistent with the purposes of the program, they may reference religion in other ways. For example, Instructors in a program for neglected and delinquent youth may note that, for some youth, values will spring from religious beliefs and traditions. In conflict mitigation programs, grantee staff may cite the fact that principles of nonviolence are anchored in the teachings of a variety of faiths. Just as public schools may teach about religion, such as the history of religion, comparative religion, literary and other analysis of the Bible and other religious text, and the role of religion in the history of the United States and other countries, grantee staff may discuss religion in these ways. In such cases, the aim is not to indoctrinate a particular faith but to take notice of the fact that religion plays important roles in the lives of some individuals and communities.

## **Program Materials**

**Q3:** What should I do if I have considered whether materials for my Department-funded program are neutral toward religion, but I am still uncertain?

**A3:** If grantee or subgrantee<sup>1</sup> staff reviewed the materials to be used in their Department-funded program but have remaining concerns as to whether the materials are neutral to religion, they may contact their State or Department program office that awarded the grant or subgrant through the program's project officer or other responsible official with their concern.

## **Statements Made by Staff and Beneficiaries in Programs and Class Assignments**

**Q4:** If a staff person in our Department-funded program provides students or other program beneficiaries with an assignment to give an oral or written report, should the instructor prohibit the participants from endorsing any religious or anti-religious views in their response?

**A4:** No. Students and other beneficiaries may express their beliefs about religion in homework, artwork, and other written and oral assignments free from religious discrimination. Such home and classroom work should be judged by ordinary standards of substance and relevance and against other legitimate pedagogical concerns identified by the school or service provider. Thus, if a teacher or instructor assigns a student to write a poem, and the student writes a poem in the form of a prayer (for example, a psalm), the poem should be judged on academic standards (such as literary quality) and neither penalized nor rewarded on account of religious content.

## **Classroom and Similar Discussions**

**Q5:** May a staff person lead a discussion in a Department-funded program in which the beneficiaries refer to their religious beliefs?

**A5:** Yes. The basic principle is that beneficiaries may express their religious beliefs, while staff must remain neutral. When supportive service providers, schools or any other programs supported by Federal funds permit beneficiaries and students to express their views and staff neither invite nor endorse specifically religious speech, then the speech is not attributable to the government, and its expression is both permissible and protected. For example, if, in a group discussion about life experiences during a Career and Technical Education program, a beneficiary on his own initiative talked about how religion was important in his life, then that would be permissible and protected. On the other hand, if an instructor initiated a discussion about the importance of religion in career choices, deliberately chose individuals to speak because they would speak about religious issues, or deliberately avoided calling on those who would talk about values from a secular perspective, that would be impermissible.

To take another example, an instructor teaching an abstinence education program may acknowledge a student's religious beliefs in a manner that is neutral to religion. If a student in the class comments on his or her Christian beliefs, the teacher may acknowledge that many faiths have important teachings on

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<sup>1</sup> The only State-administered program funded by the Department that awards subgrants for which faith-based organizations are eligible is the Twenty-First Century Community Learning Centers program. References to subgrants throughout these FAQs are to subgrants under that program.

sexuality and that an individual's faith may play an important role in making a decision on this matter. It would be inappropriate for the teacher to say or imply that religion is irrelevant to the topic, since such a statement would violate the principles of neutrality with respect to religion. Depending on the time permitted and the level of interest expressed by the student, the teacher may explore a variety of religious and non-religious influences on the subject of premarital sexual activity, provided that he or she does not convey any view as to whether any of the religious teachings are the correct or better view, and should suggest that further discussion or questions be addressed to the student's parents or guardians. If the student expresses interest in discussing or questioning with a religious leader or expert, the teacher may suggest that the student speak with a member of the clergy of his or her choice. If a student expresses interest in discussing or questioning a non-religious leader or expert, the teacher may suggest that the student seek out such leaders for guidance.

Similarly, a facilitator in a marriage promotion program, for example, may use curricula designed to generate discussions between couples to discern whether they have compatible beliefs on a variety of issues that may include the topic of compatible religious views. In this scenario, the instructor may ask questions but must remain neutral. The instructor cannot encourage or discourage participants to adopt religious beliefs or engage in religious practices. If a teacher or facilitator at a program supported by direct financial assistance from the Department recommends outside texts to participants, those outside texts must be neutral to religion.

**Q6:** If we invite guest speakers to talk to the beneficiaries of our Department-funded program, do we need to prohibit the guest speakers from referring to religion?

**A6:** No, however, it is important to remember that the Department, and the programs that it supports, must be neutral toward religion. When a faith-based organization operates a program receiving direct Federal 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 grantee might consider in inviting speakers to a forum that it sponsors: whether to establish at the beginning of the program that the grantee 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 the grantee is likely to know in advance the content of a speaker's presentation. In selecting speakers to address program participants who are minors, grantees should be mindful of parental concerns and aware that children may be more vulnerable to persuasion than adults.

### **Prayer**

**Q7:** Are there circumstances in which persons attending a Department-funded program may choose to pray on their own during the program?

**A7:** Yes. Attending a Department-funded program does not affect an individual's right to pray. 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 privately-initiated speech. Likewise, in local schools, students may pray when not engaged in school activities. In public schools,

students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or moments of free time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

### **Religious Settings or Facilities**

**Q8:** May a grantee or subgrantee of a Department-funded program conduct presentations that are neutral to religion accept an invitation to present at a religious setting such as a church or church-affiliated summer school as a part of that Department-funded program?

**A8:** Yes. A grantee or subgrantee should handle requests for presentations in an even-handed fashion that neither favors nor disfavors religion, a particular religious institution, or the religious affiliation of those in attendance. The presentation should be offered in a religiously neutral way, and decisions about where to offer presentations or provide services should be made on criteria that are relevant to the program's successful completion. Those criteria include: efficiency, need, public requests, or geographic balance, rather than on any criteria that are related to religion.

**Q9:** May grantees or subgrantees of Department-funded programs provide services in the same facility that houses a religious library?

**A9:** Yes. The availability of religious texts in a library would present a legal concern only if the administrators, instructors, or other officials also urged persons who receive Department-funded services to read the material.

### **Availability of Other Programs**

**Q10:** May an organization, with a Department-funded program, provide applicants and beneficiaries with a list of other available programs that includes programs with explicitly religious content?

**A10:** Yes. If the 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 region, then that list may include programs with secular content and programs with explicitly religious content.

### **Separate and Distinct Programs**

Faith-based organizations must ensure that any program that involves explicitly religious activities is separate and distinct from the program that receives direct Federal financial assistance, and the distinction is completely clear to the beneficiary or prospective beneficiary.

Organizations must ensure that any program that involves explicitly religious activities is separate and distinct from the program that receives direct funding from the Department, and the distinction is completely clear to the beneficiary. See 34 CFR 75.52 and 76.52.

**Q11:** May a Department-funded service provider, for example, make religious counseling available to teen beneficiaries if they request it?

**A11:** Yes. As long as the religious counseling is requested voluntarily by the program participants, the counselors are not paid with Department grant funds, and their counseling services are separated by time or location from the Department-funded services, then the service provider may make religious counseling available. The demarcation between the Department and the religious counseling services must be clear at all times. Participants must be aware that they are not required to attend religious counseling. Where the program participants are minors, the provider should obtain parental consent before permitting the youth to participate in religious counseling.

### **Outreach and Recruitment**

Faith-based organizations must ensure that the Department-funded program is open to all qualified beneficiaries, regardless of their religious beliefs or practice.

In addition, grantees and subgrantees cannot discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. See 34 CFR 75.52 and 76.52.

**Q12:** Does the prohibition against using religious criteria to select beneficiaries in Department-funded programs mean that Department-funded service providers must ensure that program participants represent a variety of faith traditions?

**A12:** No. Department-funded programs need to be accessible to the general public regardless of the faith or lack of faith of applicants and participants. This does not mean that a legal concern necessarily arises where most participants in a target area are of a single religious tradition because, for example, the program is located in a region where the population has a predominant faith tradition. The representation of religious backgrounds among those attending a program may vary for reasons unrelated to the recipient's eligibility criteria. However, a Department-funded service provider is prohibited from selecting a target group of participants or tailoring recruitment efforts based on religious affiliation.

**Q13:** If my Department-funded program has a separate and distinct religious component, and the program serves youth, does my program need to obtain parental consent to invite the youth to the religious activities?

**A13:** Yes. If a Department-funded program serves youth, the program should obtain parental consent to invite the youth to any separate and distinct religious activities, because parental consent will help ensure that any participation is voluntary. If a parent fails to provide consent, the program should ensure that those youth are not present when any invitation to a religious activity is extended.

**Q14:** May a Department-funded program for youth, such as a 21<sup>st</sup> Century Community Learning Centers, initiate loudspeaker invitations to attend separate religious activities that will be held in another room of the facility?

**A14:** Yes, so long as the invitations are brief, non-coercive and it is clear that the religious activities are separate, privately funded, and voluntary for beneficiaries. The demarcation between the Department-funded program and the religious program must be clear at all times. Participants must be aware that they are not required to attend the religious program. As participants are minors in this case, the organization should obtain parental consent to invite the youth to the religious activities, because parental consent will help ensure that any participation is voluntary. If a parent fails to provide consent, the organization should ensure that those youth participating in the Department-funded program are not present when an invitation to a religious activity is extended.

The service provider may not pay for the cost of religious services or any invitations to attend those services with Federal financial assistance funds.

### **Beneficiary Protections**

If a beneficiary or a prospective beneficiary of a Department funded program objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provided to which the prospective beneficiary has no objection. See 34 CFR 75.713 and 76.71.

**Q15:** What does it mean for a beneficiary to object to the "religious character" of an organization?

**A15:** The protections afforded to prospective beneficiaries arise when a prospective beneficiary objects to the "religious character" of an organization that provides Department-funded services. If, for example, a prospective beneficiary objects to the fact that an after-school program is administered by a specific religious group, such objection would relate to the organization's "religious character." By contrast, if the prospective beneficiary objects only to the religion of an individual employee of the organization that operates the after-school program, there is no objection to the "religious character" of the organization and therefore the protections that this rule affords are not implicated.

An objection to "religious character" is wholly separate and distinct from an objection to explicitly religious activities that an organization conducts without separation in either time or location from activities that are supported with direct Federal financial assistance. As explained above, the integration of explicitly religious activities into a Department-funded program is prohibited.

**Q16:** If a prospective beneficiary objects to the religious character of a faith-based organization, in what form must the objection be made?

**A16:** The Department's final regulations include an Appendix A to 34 CFR Part 75, which includes the notice that faith-based organizations must provide beneficiaries before they start receiving services. This form includes space for a beneficiary to request a referral if the beneficiary objects to the religious character of the service provider. This is what the form says in the referral request part of the notice:

#### **"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 above. If you object, we will

make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you 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.

"Name:

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

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

"(  ) Please do not follow up."

34 CFR Part 75, Appendix A, referral request text. All the beneficiary has to do is check whether the beneficiary wants to be referred, whether follow up is desired, and, if so, whether the beneficiary would like a personal follow up or a follow up with the alternative provider. While the beneficiary does not have to use this form to preserve the right to a referral, using the form will ease the beneficiary's efforts to request referral and simplify the organization's record-keeping responsibilities under the regulations because the organization just needs to retain the form for its records. Any efforts to follow up regarding the success of the alternative placement can be documented by just adding notes to the form, stating the date the referral was made, the name of the alternative provider and its address, plus the contact information for the alternative provider.

The regulations do not require a beneficiary to follow any specific format in making an objection, but it must be reasonably clear under the circumstances that he or she objects to the service provider because of its religious character. For example, if a beneficiary objects to the religious character of an organization after admission to its grant project, the organization may give the beneficiary the notice that would normally be used upon admission, to document the beneficiary's objection. While the organization is not required to use any specified format, the format must neither unduly limit the prospective beneficiary's ability to object nor impose an undue burden on a prospective beneficiary who seeks to state an objection and to be referred to an alternative provider. A potential beneficiary may object orally or in writing, as long as the organization keeps a written record of the objection. The objection may include the individual's name unless he or she has withheld it or asked that it not be recorded. If a prospective beneficiary withholds his or her name, the organization must inform the prospective beneficiary that it will not be able to follow up on the referral. Under no circumstances, however, may an organization violate applicable privacy laws and regulations in following up with beneficiaries. Subject to the organization's reporting obligations to the funding agency, the organization must keep the personal and identifying information of prospective beneficiaries confidential.

**Q17:** What content is required for the written notice to beneficiaries?

**A17:** The content of the written notice to beneficiaries is specified in Appendix A to Part 75. This notice must be used by faith-based organizations when accepting new admissions into the project or program it administers. This notice apprises the prospective beneficiary, for example, that he or she may object to the organization's "religious character" and, upon objection, receive a referral to an alternative provider. The written notice generally must be provided to the prospective beneficiary prior to the Department-funded services being provided. For prospective beneficiaries who cannot read or understand the notice (e.g., due to lack of literacy, limited English proficiency (LEP), or disability), organizations must make reasonable efforts to provide translation or interpretation services, accessible alternative formats, or appropriate counseling, in accordance with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and implementing guidance. Organizations may obtain additional guidance from the agency that awarded the grant or subgrant to the organization to ensure that any notice complies with agency LEP policies. See 34 CFR Part 75, Appendix A for the required written notice.

**Q18:** When a beneficiary objects to the religious character of a Department-funded faith-based service provider and requests an alternative can the faith-based organization discharge its referral obligation by notifying the beneficiary that it is not aware of any alternatives without having first engaged in affirmative efforts to identify alternatives?

**A18:** No. If the faith-based organization is not already aware of an alternative service provider, the organization must undertake reasonable, good-faith efforts to identify an alternative for the beneficiary. If the faith-based organization is unable to identify an alternative, the organization must notify the intermediate State agency or the Department that made the award, which shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred.

In making the referral, the faith-based organization must comply with all applicable privacy laws and regulations. If the referral is successful, the organization must document the referral in its grant records so the documentation is available for monitoring and audit. The organization may establish a record of referral by retaining a copy of the notice given the beneficiary, noting the name, address, and contact information for the alternative provider. If the beneficiary asks the organization to follow up, either with the beneficiary or the alternative service provider, as documented on the request for the referral, the organization should document on the form or some other document retained with the form the date(s) that the follow up was done and the nature of the confirmation of the referral. See 34 CFR 75.713(d) (1) and 76.713(d) (1) and Appendix A to Part 75.

If the faith-based organization is unable to successfully identify and refer a beneficiary to an alternative service provider, the organization must notify the subgrantee, grantee, or the Department that made the award under which the referral could not be made and that entity must determine if a referral can be made. If the entity that made the award cannot make a referral, it must contact the grantee or Department to determine whether the grantee or Department, as appropriate, can make a referral. State grantees under the 21<sup>st</sup> Century Community Learning Centers program (21stCCLC) shall ensure

that all awards made to subgrantees include conditions to impose these same responsibilities on the subgrantees. Any grantee or a subgrantee under the 21stCCLC that awards a contract to a faith-based organization to provide program services to beneficiaries must include conditions to impose these responsibilities on the faith-based contractor as required under 2 CFR 3474.15(a).

**Q19:** For cases in which services are provided in person, what is a faith-based organization's responsibility to identify appropriate alternative providers to which a referral can be made?

**A19:** In all cases in which services are provided in person, the faith-based organization must undertake reasonable efforts to identify any alternative provider that is available in reasonable geographic proximity to the referring organization. The definition of "reasonable geographic proximity" is not just a measure of distance but will depend on the circumstances, the services provided, and the transportation options available to the prospective beneficiary. A faith-based organization that has questions about what efforts must be undertaken to identify an alternative provider within "reasonable geographic proximity" should contact the entity that awarded its contract, subgrant, or grant under which the referral request was made to obtain guidance. In identifying the alternative service provider, the faith-based organization must also determine, before making a referral, whether the alternative provider has the capacity to accept additional beneficiaries.

**Q20:** Must the referral to an alternative provider be to a secular or non- religious program service provider?

**A20:** No. The alternative provider need not be a secular provider. However, if the beneficiary desires a secular provider, and a secular provider is available, then the referral must be made to the secular provider. In attempting to determine an appropriate alternative, a faith- based organization may ask a prospective beneficiary if he or she would prefer or not prefer another faith-based provider and may make a referral based on the prospective beneficiary's stated preference. However, a faith-based organization may not steer a potential beneficiary to or away from other faith-based organizations because the faith-based organization itself favors or disfavors the religious character of those organizations. See 34 CFR 75.713(b) and 76.713(b).

**Q21:** Is the referring organization responsible for any additional costs that the beneficiary incurs as a consequence of being referred to an alternative provider?

**A21:** No. The referring organization is not under an obligation to subsidize transportation costs or other increased cost burdens that the prospective beneficiary incurs as a consequence of pursuing a referral to an alternative provider. However, to the extent that various alternative providers are available, referring organizations are encouraged to take into account the cost to the prospective beneficiary in determining which provider is most appropriate for referral.

**Q22:** What constitutes an appropriate and timely referral?

**A22:** Whether a referral is appropriate and timely will depend on the circumstances of each situation. When the nature of the service is urgent, or easily identifiable alternative providers are known to

operate in close proximity, a timely referral must be offered in a shorter period of time than when the nature of the service is not as urgent, and alternative providers are difficult to identify in reasonable geographic proximity. Some of the considerations that should be made in determining the appropriateness of an alternative provider include: distance, available transportation options, cost, and the availability of services comparable to the services offered by the referring organization. When services are offered by telephone, long distance fees should be considered as a potential cost and, when services are offered by internet, the prospective beneficiary's internet access should be considered.

**Q23:** Does a faith-based organization that makes a referral have to inform the agency that made its award?

**A23:** No, the faith-based organization does not have to notify the awarding agency if the organization makes a successful referral. The faith-based organization has to promptly notify the awarding agency only if the organization cannot make a referral after making reasonable efforts to refer a beneficiary. If the organization cannot make a referral, the notification must be made promptly. Promptness will be determined in the based on the urgency of making a referral. See the response to Q22 for guidance on how quickly the organization must notify the awarding agency. At a minimum, when the organization determines that it is unable to identify an alternative provider, the organization shall notify the awarding agency within the same amount of time that it would have to make a referral based on the nature of the services provided. See 34 CFR 75.713(d) (1) and 76.713(d) (1).

**Q24:** What obligation does a referring organization have to follow up on the beneficiary?

**A24:** The notice specified in 34 CFR Part 75, appendix A, gives the beneficiary the option to request follow-up with the beneficiary or with the alternative service provider or not to follow up at all. If the beneficiary does not request follow-up on the referral form, the faith-based organization has no duty to follow up on the alternative placement. However, if the beneficiary requests follow-up, the organization should contact either the beneficiary or the alternative service provider, as indicated by the beneficiary, to determine whether the referral was successful. Under no circumstances, however, may an organization violate applicable privacy laws and regulations in following up with beneficiaries. When a prospective beneficiary refuses to provide his or her name or his or her approval to follow-up, the organization has no obligation to follow up and may inform the prospective beneficiary that the organization will not be able to follow up on any referral for which it does not have the beneficiary's name. A prospective beneficiary may always opt out of follow-up—which may be particularly important for victims of certain crimes such as domestic violence, dating violence, sexual assault, or stalking. In such cases, the provider should not follow-up with the beneficiary.

**Q25:** Do the obligations of this rule apply to sub-grantees (also called sub-recipients or subawardees)?

**A25:** Yes. State grantees under the 21<sup>st</sup>CCLC must ensure that all faith-based subgrantees are aware of the requirements of this rule. A faith-based subgrantee must report an inability to make a referral to the State that awarded the subgrant. Regardless of how subgrantees make these reports, grantees are responsible for the compliance of subgrantees with Federal civil rights laws.

**Q26:** Do the obligations of this rule apply to contracts to provide program services under a subgrant or grant?

**A26:** Yes, the subgrantee or grantee that awards a contract to a faith-based organization must include conditions in the contract award to impose the same obligations on the contractor under the subgrant or grant. See 2 CFR 3474.15(a). A contractor must report an inability to make a referral to the subgrantee or grantee that made the award. Regardless of how a contractor makes these reports, the subgrantee or grantee that awarded the contract to provide program services is responsible for the compliance of contractor with Federal civil rights laws.

**Q27:** Must the notice to beneficiaries always be given in writing?

**A27:** No. When services are provided by telephone, the provider may read the beneficiary a brief statement regarding beneficiary protections. For example, the awardee may briefly inform each beneficiary or prospective beneficiary of the same information that is included on the written notice included in 34 CFR Part 75, Appendix A.

**Q28:** Must the notice to beneficiaries always be given as a written handout?

**A28:** No. Whenever possible, written notice should take the form of a written handout and, if feasible, a prominent poster or placard in the service area should notify beneficiaries that they have a right to receive a written notice of their rights. When the nature of the service provided or exigent circumstances make it impracticable to provide either or both forms of such written notice in advance of the actual service, service providers shall advise beneficiaries of their protections at the earliest available opportunity.

**Q29:** In some cases, the only service provided under a grant, subgrant or contract is to make referrals. Must such organizations provide notice to beneficiaries about these protections?

**A29:** No. In those cases, it suffices for the provider simply to make referrals. If a referral is made to an organization that receives direct Federal financial assistance and offers program services other than referrals, then that organization will be required to provide notice to beneficiaries about beneficiary protections.

**Q30:** Must the alternative provider be one that receives direct Federal financial assistance?

**A30:** No, although it is preferable to make a referral to a provider that receives direct Federal financial assistance. If no such alternative provider exists, however, or if such a provider does exist but is also objectionable to the beneficiary due to the alternative provider's religious character, the original provider may make a referral to another alternate provider that does not receive Federal financial assistance if it is in reasonable geographic proximity to the organization making the referral, offers services that are similar in substance and quality to those offered by the organization, and has the capacity to accept additional beneficiaries.

**Q31:** If an organization considers itself to be religious or faith-based but does not offer any religious activities, must it provide the written notice to beneficiaries?

**A31:** Yes. Some beneficiaries may object to receiving services from a faith-based or religious provider regardless of the nature of the services provided, so beneficiaries should be notified about their ability to register such objections.

**Q32:** Should a provider's religious affiliation be taken into account in the awards decision-making process in an effort to ensure that beneficiaries do not object to the religious character of a provider? In other words, would it be better for awards decision-makers to make an award to a secular provider over a religious provider in order to avoid such objections?

**A32:** No. 34 CFR 75.52 and 76.52, clearly indicate that a reviewer must not take a provider's religious affiliation or lack of religious affiliation into account in the awards decision-making process. 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 or religious belief, or lack thereof.

**Q33:** Do intermediaries have an obligation to fund a secular alternative if they fund a faith-based organization?

**A33:** No. Although State agencies under the 21<sup>st</sup> CCLC may serve as a resource to identify a comparable alternative service provider when a beneficiary objects to the religious character of a faith-based organization providing community learning center activities, the States have no obligation to fund a secular alternative when they fund a faith-based-organization. In the grant-making process, a State agency may not consider the religious or secular character of an applicant organization in making a grant award.

**Please note:** Throughout this appendix, the term "prospective beneficiary" includes a current beneficiary.

**For more information:** You may refer to the following key regulatory guidance documents for help with applying for and administering Department grant programs.

- Program specific regulations
- Education General Administrative Regulations, 34 CFR (EDGAR)
- The Uniform Guidance, 2 CFR Part 200
  - 2 CFR Part 200 Subpart D.
  - 2 CFR Part 3474, 3474.15.