

Questions-and-Answers (Q&As) on Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations and HUD’s Regulation at 24 CFR 5.109, Equal Participation of Faith-Based Organizations in HUD Programs and Activities

Last Updated: January 12, 2017

Many organizations seek guidance as to whether they can continue the religious component of their total service delivery if they receive HUD funding. This document seeks to address popular questions on related topics on equal participation of faith-based organizations in HUD programs, separation of explicitly religious activities from HUD-funded activities, the distinction between direct and indirect Federal financial assistance, and beneficiary protections.

Below you will find some frequently asked questions on several topics, with general answers.

For background: In 2010, a Presidential Advisory Council recommended several changes to strengthen the partnerships between the Federal Government and non-governmental service providers, including strengthening the constitutional and legal footing of these partnerships, which were originally established under Executive Order 13279, entitled “Equal Protection of the Laws for Faith-Based and Community Organizations” and implemented in 2002

In 2016, HUD, along with other Federal agencies, issued a joint Final Rule implementing Executive Order 13559, which amended E.O. 13279. HUD’s final rule can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-04/pdf/2016-07339.pdf> HUD’s regulations (codified at [24 CFR §5.109](#)) were updated to ensure that faith-based and secular non-profit organizations are aware of their rights and afforded the opportunity to participate equally in the HUD grants process.

If you have any doubt or need further or situation-specific information after reading these Q&As, please email HUD’s Center for Faith-Based and Neighborhood Partnerships (“the Center”) at PartnershipsGuidance@hud.gov.

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A. Explicitly Religious Activities

Faith-based organizations must separate, in time or location, explicitly religious activities from programs or activities supported by direct Federal financial assistance. See 24 CFR 5.109 (e).

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 HUD-funded grant, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the direct Federal financial assistance from HUD must be voluntary. See 24 CFR 5.109 (e).

Q1: In addition to worship, religious instruction, and proselytizing, what are some other examples of “explicitly religious activities”?

A1: Other examples of explicitly religious activities include devotional exercises, production or dissemination of devotional guides or other religious materials, and counseling in which counselors introduce religious content. 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.

Q2: Are there examples of activities in which Federally funded staff may refer to religion without violating the prohibition against engaging in “explicitly religious activities” with direct Federal financial assistance?

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, staff in programs supported by direct Federal financial assistance may not provide devotional religious instruction, but, where consistent with the purposes of the program, they may reference religion in other ways. For example, in Healthy Marriage or Responsible Fatherhood programs, 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 youth, values will spring from religious beliefs and traditions. In conflict mitigation programs, 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 scripture, and the role of religion in the history of the United States and other countries, staff in Federally supported programs may discuss religion in these ways. In such cases, the aim is not to inculcate faith, but to take notice of the fact that religion plays important roles in the lives of some individuals and communities.

Q3: Can we conduct religious activities for beneficiaries of our HUD-funded program?

A3: Organizations that receive direct HUD funds may not engage in explicitly religious activities, such as worship, religious instruction, or proselytizing, as a part of the program or activities that receive direct Federal financial assistance from HUD. Explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct HUD funds.

Additionally, and this is **very important**, participation in explicitly religious activities must be **voluntary** for the beneficiaries of programs or activities supported by direct Federal financial assistance.

The distinction between the Federally-funded program or activity and separate, explicitly religious activities, must be clear to beneficiaries of the Federally-funded program or activity. HUD guidance on maintaining separate and distinct programs is available on page 5 of HUD's Notice SD-2016-01, "*Guidance on HUD Regulations Implementing Executive Order 13559—Participation of Faith-Based Organizations in HUD's Programs and Activities, Separation of Explicitly Religious Activities, Nondiscrimination, and Other Related Topics*," which is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=16-01SDN.pdf>.

B. Program Materials

Q4: What should I do if I have considered whether materials for my Federally-supported program are neutral toward religion, but I am still not certain?

A4: If staff of a recipient of HUD funding reviewed the materials to be used in its HUD-funded programs, but have remaining concerns as to whether the materials are neutral to religion, they may request further guidance from the relevant HUD program office(s).

C. Statements Made by Beneficiaries in Programs and Class Assignments**Q5:** If a staff person in a Federally funded program provides students or other program beneficiaries with an assignment to give an oral or written report, should the instructor also prohibit the participants from endorsing any religious or antireligious views in their response?

A5: 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 provider. Thus, if an 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.

D. Classroom and Similar Discussions

Q6: May staff members lead a discussion in a Federally supported program in which the beneficiaries refer to their religious beliefs?

A6: Yes. The basic principle is that beneficiaries may express their religious beliefs, while staff must remain neutral. When providers permit beneficiaries to express their views and staff neither invite nor endorse specifically religious speech, then the speech is not attributable to the Federal Government, and its expression is both permissible and protected. For example, if, in a group discussion about life experiences that is part of a reentry program for formerly incarcerated persons, a beneficiary on his own initiative talks about how religion was important in his life, then that would be permissible and protected. On the other hand, if an instructor initiates a discussion about the importance of religion in rehabilitation, deliberately chooses individuals to speak because they would speak about religious issues, or deliberately avoids 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 instructor may acknowledge that many faiths have important teachings on 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 instructor 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 instructor 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. If the student expresses interest in discussing or questioning with a religious leader or expert, the instructor 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 instructor may suggest that the student seek out such leaders for guidance.

Q7: If we invite guest speakers to talk to the beneficiaries in our Federally supported program, do we need to prohibit the guest speakers from referring to religion?

A7: There is no general prohibition against a guest speaker referring to religion when talking to beneficiaries. Also, the organization carrying out the program with direct Federal financial assistance must refrain from endorsing or criticizing the religious purpose, activities, or speech of the speakers. It is important to remember that the Federal Government, and the programs that it supports, must be neutral toward religion. When a recipient of direct Federal financial assistance invites speakers to address program participants, it should neither favor nor disfavor religion in general, a particular religion, or religious speech. To adhere to the neutrality principle, there are a number of factors that a recipient of direct Federal financial assistance might consider in inviting speakers to a forum that it sponsors — for example, whether to establish at the beginning of the program 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 the recipient is likely to know in advance the content of a speaker’s presentation. In selecting speakers to address program participants who are minors, recipients should be mindful that a family’s religious beliefs or practices are a private matter, that parents or guardians might have concerns when a speaker shares a particular religious perspective with their children, and that children may not feel they can assert their own rights – such as removing themselves from a situation that includes religious speech, seeking an alternative provider, or making their own choice about religious practices or beliefs.

E. Prayer

Q8: Are there circumstances in which beneficiaries attending a Federally supported program may choose to pray on their own during the program?

A8: There are no particular circumstances in which beneficiaries are permitted to pray or prohibited from praying. Attending a Federally supported 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.

F. Religious Settings or Facilities

Q9: What restrictions apply to the use of direct HUD funds for acquisition, construction or rehabilitation of a structure when the structure will be used for both eligible activities under a HUD program as well as explicitly religious activities, which are not eligible to be supported with direct Federal financial assistance?

A9: When direct HUD funds pay for acquisition, construction or rehabilitation of a structure, the direct HUD funds may only be used to the extent that the structure is used for conducting eligible activities under a HUD program or activity. If a structure is used for both eligible and explicitly religious activities, direct HUD funds may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to the eligible activities in accordance with the cost accounting requirements applicable to the

specific HUD program or activity. See 24 CFR 5.109(j). This is also consistent with 24 CFR part 200, which provides that a cost is allocable to a particular Federal award if the goods or services involved are chargeable or assignable to that Federal award in accordance with relative benefits received.

Note, however, that acquisition, construction or rehabilitation of sanctuaries, chapels or other rooms that a HUD-funded organization uses as its principal place of worship may not be paid for with direct HUD funds. The following examples illustrate this restriction:

Example 1: An organization applies for Community Development Block Grant (CDBG) funds to make several necessary repairs to a one-room church. On Sunday morning, the one-room church serves as the location for the organization's congregational worship. During weekdays, the one-room church is used to operate a "soup kitchen" for homeless individuals. Accordingly, except for the few hours on Sunday morning when the one-room church hosts the organization's worship services, it is used for the purpose of providing meals to homeless individuals—a purpose that is eligible for use of CDBG funding. *However*, because the one-room church is used as the organization's principal place of worship, the organization may not use direct HUD funds to carry out the repairs.

Example 2: An organization applies for CDBG funds to do necessary rehabilitation work to two rooms in the basement of a synagogue, which the organization uses to operate a "soup kitchen." The organization does not use either of these rooms as its principal place of worship. Accordingly, if the rehabilitation otherwise meets CDBG program eligibility criteria, the rehabilitation of the two rooms is eligible to be carried out with the CDBG funds. If the rehabilitation involves improvements that benefit the entire building, the organization will need to appropriately allocate the use of CDBG funds for those improvements.

Q10: May a provider that is conducting presentations that are neutral toward religion in connection with a HUD-funded program accept an invitation to present at a religious setting such as a church or church-affiliated summer school as a part of that Federal program?

A10: Yes. The provider should handle requests for presentations in an evenhanded fashion that neither favors nor disfavors religion, a particular religious institution, or the religious affiliation of those in attendance. Activities should be carried out in a religiously neutral way, and decisions about where to offer presentations or carry out other activities should be made 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.

Q11: May programs or activities be carried out with Federal financial assistance in a facility that houses a religious library?

A11: Yes. The availability of religious texts in a library would present a legal concern only if the administrators, instructors, or other officials also urged beneficiaries of direct Federally-funded programs or activities to read the material.

Q12: Does a faith-based organization need to mask its religious identity in order to receive HUD funds?

A12: No. A faith-based organization that receives direct Federal financial assistance from HUD may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities without removing religious art, icons, scriptures, or other religious symbols; keep religious terms in its organization's name; continue to carry out explicitly religious activities if separated in time or location from Federally-funded programs or activities; continue to use religion as a basis to select their board members (including members of the clergy); include religious references in its organization's mission statements and other governing documents; otherwise govern themselves on a religious basis; and continue to carry out its mission, including the definition, development, practice and expression of its religious beliefs, provided that it does not use direct Federal financial assistance to support or engage in explicitly religious activities or in any other manner prohibited by law.

G. Availability of Other Programs

Q13: May an organization that receives HUD funding provide applicants and beneficiaries with a list of other available programs that includes programs with explicitly religious content?

A13: Yes. If the organization is a recipient of direct Federal financial assistance and 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. In addition, although not required, a recipient of indirect assistance may provide a list of alternative providers.

H. Separate and Distinct Programs

Recipients of direct Federal financial assistance 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. See 24 CFR 5.109 (e).

Q14: May a provider that carries out a program or activity with direct Federal financial assistance make religious counseling available to beneficiaries if they request it?

A14: The answer depends on what "make available" means. The recipient may not provide religious counseling as a part of the program supported with direct Federal

financial assistance. However, the recipient may provide information about religious counseling services that are separate and distinct from the Federally-assisted program. As long as the religious counseling is requested voluntarily by the beneficiaries, the counselors are not paid with direct Federal financial assistance, and their counseling services are separated by time or location from the Federally supported program, then the service provider may provide religious counseling to the beneficiary – including religious counseling that the recipient may provide in a separate, non-Federally-assisted program. The demarcation between the Federally supported program and religious counseling must at all times be clear. Beneficiaries must be aware that they are not required to attend religious counseling. Where the beneficiaries are minors, the provider should obtain parental consent to invite the youth to religious counseling.

I. Outreach and Recruitment

Recipients of Federal financial assistance must ensure that the HUD-funded program is open to all qualified beneficiaries, regardless of their religious beliefs or practice.

In addition, federally funded programs may not 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 24 CFR 5.109 (h).

Q15: Does the prohibition against using religious criteria to select beneficiaries in Federally supported programs mean that Federally-financed service providers must ensure that program participants represent a variety of faith traditions?

A15: No. Federally supported programs need to be accessible to applicants and participants irrespective of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Q16: If my Federally supported 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?

A16: Yes. If a Federally- supported program serves youth, parental consent to invite the youth to any separate and distinct religious activities is necessary to ensure that any participation is voluntary. If a parent does not provide consent, the program should ensure that those youth are not present when any invitation to an explicitly religious activity is extended.

Note: “Parental consent” does not require that the beneficiary have a parent, per se, but someone or some entity that is authorized to make a parental decision *in loco parentis*.

Q17: May a Federally supported program for youth initiate loudspeaker invitations to attend separate explicitly religious activities that will be held in another room of the facility?

A17: Yes, so long as the invitations are brief and non-coercive and it is clear that the explicitly religious activities are separate, privately funded, and voluntary for beneficiaries. The demarcation between the Federally supported program and the religious program must at all times be clear. Participants must be aware that they are not required to attend the religious program. As participants are minors in this case, the program 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 program should ensure that those youth are not present when an invitation to an explicitly 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.

Q18: Can our organization hire along religious lines?

A18: Generally, a faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion is not forfeited when the organization participates in a HUD program, including when the organization carries out activities with HUD funding. However, funding recipients in the CDBG and HOME programs are subject to program-specific statutory requirements that prohibit discrimination, including in hiring decisions, on the basis of religion. If your organization believes that its exercise of religion is substantially burdened by this prohibition, relief may be available under the Religious Freedom Restoration Act (RFRA, pronounced RIF-ra). Funding recipients with questions about CDBG or HOME program requirements should direct them to the Office of Community Planning and Development in their local field office. Contact information for CPD field offices is available at: <https://www.hudexchange.info/programs/cpd-field-office-directory/>.

J. Beneficiary Protections

If a beneficiary or a prospective beneficiary objects to the religious character of an organization carrying out programs or activities with direct Federal financial assistance from HUD, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the prospective beneficiary has no such objection. See 24 CFR 5.109 (g).

Q19: What does it mean for a beneficiary to object to the "religious character" of an organization?

A19: Some protections afforded to beneficiaries and prospective beneficiaries arise when a beneficiary or prospective beneficiary objects to the "religious character" of an

organization that carries out a program or activity with direct Federal financial assistance. The option for a beneficiary or prospective beneficiary to be referred to another organization to provide the service is limited to programs or activities with direct Federal financial assistance, and begins with a complaint to the organization carrying out the program or activity with direct Federal financial assistance objecting to that organization's religious character. It should be noted that the organization's religious character is protected under 24 CFR 5.109, although beneficiaries of its Federally-funded programs and activities are not compelled to receive such services based on the organization's religious character.

An objection to "religious character" is wholly distinguishable 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 program supported with direct Federal financial assistance is prohibited.

Q20: If a beneficiary or prospective beneficiary objects to the religious character of an organization, in what form must the objection be made?

A20: HUD requirements on beneficiary objection and referral are located at 24 CFR 5.109(g). HUD does not require beneficiaries to follow any specific format, though a model written notice of beneficiary rights and beneficiary referral request form has been published at Appendix E to the agencies' final regulations implementing Executive Order 13559, at 81 FR 19428-29, and is also available at Section VI (page 18-20) of the [Deputy Secretary Notice SD-2016-01](#).

Q21: What content is required for the written notice to beneficiaries of certain protections available to them?

A21: The written notice to beneficiaries must provide the content listed in 24 CFR 5.109(g)(1), which states:

- (i) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- (ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;
- (iii) The organization must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;
- (iv) If a beneficiary objects to the religious character of the organization, the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no such objection; and

(v) Beneficiaries or prospective beneficiaries may report an organization's violation of these protections, including any denial of services or benefits by an organization, by contacting or filing a written complaint to HUD or the intermediary¹ if applicable.

Recipients and subrecipients must take reasonable steps to ensure that individuals with limited English proficiency (LEP) have meaningful access to their programs and activities in accordance with 24 CFR Part 1, as well as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d through 2000d-7. Providing meaningful access to LEP persons may include providing language assistance services, such as translation of the written notice. HUD issued guidance to recipients on their responsibilities with respect to providing meaningful access to LEP persons pursuant to Executive Order 13166. That guidance is published at 72 FR 2732 and is available at: https://www.lep.gov/guidance/guidance_Fed_Guidance.html#HUD

Recipients and subrecipients must also ensure that individuals with disabilities are provided effective communication, in accordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and HUD's implementing regulations at 24 CFR part 8, and the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.* Effective communication may include providing the written notice to beneficiaries in an accessible format.

Recipients and subrecipients may seek additional guidance on compliance responsibilities from the appropriate HUD program office, or intermediary, as appropriate, under the particular Federal financial assistance program.

Q22: When a beneficiary objects to the religious character of a Federally supported provider and requests referral to an alternative, can the provider 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?

A22: No. If the provider is not already aware of a suitable alternative, the provider must undertake reasonable efforts to identify a suitable alternative provider for the beneficiary at a minimum, an organization should attempt to identify an alternative provider in reasonable geographic proximity, determine what services the alternative provider offers, and determine whether the alternative provider is accepting new referrals. If the provider is unable to identify an alternative after reasonable efforts, the provider must promptly notify the intermediary, or if there is no intermediary, HUD,

¹ "Intermediary" refers to an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal government, or State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs. Intermediaries are responsible for ensuring that subrecipients to which they provide Federal financial assistance comply with HUD's requirements, including civil rights related program requirements.

which shall promptly determine whether there is any other suitable alternative provider to which the beneficiary may be referred.

In making the referral, the organization must comply with all applicable privacy laws and regulations. The organization must maintain a record of the referral and must follow up to determine whether the beneficiary or the prospective beneficiary contacted the alternative provider, unless the beneficiary or prospective beneficiary requests no follow up. Recipients must ensure that all sub-recipient agreements make organizations receiving HUD funds aware of these requirements.

In most cases, HUD anticipates that the process of making a referral will require much less than two hours of staff time. Further, as stated in the preamble to the final rule, a provider need not spend more than approximately two hours of staff time in order to fulfill the “reasonable efforts” requirement.

Q23: For circumstances in which services are provided in person, what is an organization’s responsibility to identify appropriate alternative providers to which a referral can be made?

A23: In all cases in which services are provided in person, the organization must undertake reasonable efforts to identify any alternative provider available that is in reasonable geographic proximity to the referring organization and that carries out activities that are similar in substance and quality to those offered by the organization making the referral. 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. The alternative provider also must have the capacity to accept additional clients.

Q24: In the case of a faith-based organization, must the referral to an alternative provider be to a secular or non- religious provider?

A24: No. The alternative provider need not be a secular provider. However, if the beneficiary requests a secular provider, and a secular provider is available that offers services similar in substance and quality, then the referral must be made to that 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 24 CFR 5.109 (g)(3).

Q25: Is the referring organization responsible for any additional costs that the beneficiary incurs as a consequence of being referred to an alternative provider?

A25: No. The referring organization is not under an obligation to subsidize transportation costs or other increased cost burdens that the 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 beneficiary in determining which provider is most appropriate for referral.

Q26: What considerations must be made when assessing whether a provider has satisfied the referral requirement? What other considerations may be made?

A26: The rule at 24 CFR 5.109(g) requires the alternative provider to be in “reasonable geographic proximity” to the referring provider, carry out activities that are similar in substance and quality to those offered by the referring provider, and to have the capacity to accept new clients. Factors that may be considered in assessing whether the alternative provider meets these criteria include – for example, distance from the location of services by the referring organization, available transportation options and cost, comparability of the content, quality, and cost of the alternative services, waiting time and other queuing requirements prior to service. 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.

Q27: Does an organization that makes a referral need to inform HUD, or, if applicable, the intermediary?

A27: No. When an organization makes a referral to an alternative provider, the organization is not required to inform HUD (or the intermediary). The referring organization must maintain a record of the referral, which is subject to a HUD or intermediary review, depending on the nature and requirements of the HUD program. HUD encourages organizations to use the sample form that it issued as part of the final rule, which is included at Section VI (page 18-20) of the [Deputy Secretary Notice SD-2016-01](#). If an organization is unable to make a referral after reasonable efforts, the organization must promptly notify HUD or, if applicable, the intermediary, upon which HUD or the intermediary will promptly determine whether there is any other suitable alternative provider to which the beneficiary or prospective beneficiary may be referred. See 24 CFR 5.109 (g)(3)(iv).

Q28: What obligation does a referring organization have to follow up on the beneficiary?

A28: The precise obligations of the referring organization depend on the underlying HUD program funding the program or activity that the organization is carrying out. At a minimum, to satisfy record-keeping requirements, the organization that refers an

objecting beneficiary to an alternative service provider is required to retain information on whether the referral was made and whether the beneficiary contacted the alternative provider. It is reasonable for service providers to have a consistent procedure for keeping track of referrals, follow-up contacts, and whether the beneficiary is receiving services from the alternative provider. Under no circumstances, however, may an organization violate applicable privacy laws and regulations in following up with beneficiaries. A 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 on the beneficiary.

Q29: Do the obligations of this rule apply to sub-grantees (also called sub-recipients or subawardees)?

A29: Yes. Grantees must ensure that all subgrantees to which they provide funds comply with the requirements of 24 CFR 5.109.

Q30: Must the notice to beneficiaries always be given in writing?

A30: 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 that there are certain protections for beneficiaries due to the fact that the program is funded in whole in or in part by the Federal Government and ask whether the beneficiary would like to know those protections. If the beneficiary or prospective beneficiary responds affirmatively, then the provider must read the full notice over the telephone.

Q31: Must the alternative provider be one that receives direct Federal financial assistance?

A31: 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 location where the beneficiary is receiving or would receive services (except for services provided by telephone, Internet, or similar means), offers services that are similar in substance and quality to those offered by the organization, and has the capacity to accept additional clients.

Q32: Must the provider always give notice to beneficiaries immediately and to prospective beneficiaries prior to the delivery of services?

A32: No. HUD's regulation at 24 CFR 5.109(g)(2) states: "The written notice must be given to prospective beneficiaries before they enroll in any HUD program or activity. When the nature of the program or activity or exigent circumstances make it impracticable to provide the written notice in advance, the organization must provide written notice to beneficiaries of their protections at the earliest available opportunity." Therefore, notice must be provided to beneficiaries at the earliest available opportunity, and the notice must be provided to prospective beneficiaries prior to enrollment in a HUD-assisted program or activity unless there is an emergency or exigent circumstance, in which case, notice must be provided at the earliest available opportunity. An emergency or exigent circumstance could be one in which the provision of notice would constitute an interruption in enrollment and service delivery that would pose a risk to health or safety. For example, consider a domestic abuse hotline in which the caller needs immediate advice to ensure his or her safety. Benefits could be delivered first, in the form of the information needed. Then the notice requirements could be met at the first opportunity after immediate health or safety needs are addressed.

Q33: If an organization considers itself to be of religious character or faith-based but does not offer any explicitly religious activities, must it provide the written notice to beneficiaries?

A33: Yes. Some beneficiaries may object to receiving services from an organization of religious character (whether the organization refers to itself as "religious" or "faith-based"), so beneficiaries should be notified about their ability to register such objections.

Q34: 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?

A34: No. The decision to award Federal financial assistance must be based on merit, not based on the religious character or affiliation, or lack thereof, of an organization. See 24 CFR 5.109 (c).

Q35: Do intermediaries have an obligation to fund a secular alternative if they fund a faith-based organization?

A35: No. Intermediaries have no obligation to fund a secular alternative when they fund a faith-based-organization. In the grant-making process, an intermediary may not consider the religious character or affiliation, or lack thereof, of an applicant organization in making a grant award.

Resources (non-exhaustive):

- [Final Rule: E.O. 13559 - Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations](#)
- [24 CFR 5.109: Equal Participation of Religious Organizations in HUD Programs and Activities](#)
- [Notice SD-2016-01: Guidance on HUD Regulations Implementing Executive Order 13559-Participation of Faith-Based Organizations in HUD's Programs and Activities, Separation of Explicitly Religious Activities, Nondiscrimination and Other Related Topics](#)
- [HUD Program specific regulations at Title 24 of the Code of Federal Regulations](#)

For additional questions, please email us at PartnershipsGuidance@hud.gov