



October 2017

# FAITH-BASED GRANTEES

## Few Have Sought Exemptions from Nondiscrimination Laws Related to Religious-Based Hiring

# GAO Highlights

Highlights of [GAO-18-164](#), a report to congressional requesters

## Why GAO Did This Study

The federal government provides billions of dollars in grant funding to organizations offering social services, including FBOs. In carrying out their mission, some FBOs prefer to hire individuals who share their religious beliefs. Although the 1964 Civil Rights Act prohibits employment discrimination based on religion, section 702(a) of the Act exempts FBOs from this prohibition, thereby allowing them to hire based on religion. However, some federal grant programs contain statutory restrictions prohibiting this practice. Since a 2007 DOJ legal opinion, federal agencies allow faith-based grantees to use RFRA as a basis for seeking an exemption to allow religious-based hiring.

GAO was asked to review the extent to which faith-based grantees have sought RFRA exemptions from statutory restrictions on religious-based hiring. This report describes (1) what is known about faith-based grantees that have certified exemption from statutory restrictions on religious-based hiring, per RFRA, since 2007; and (2) how agencies inform grantees of statutory restrictions on religious-based hiring and requirements for demonstrating their eligibility for an exemption.

GAO reviewed information from DOJ, HHS, and DOL grantees from fiscal years 2007 to 2015 that were subject to statutory restrictions on religious-based hiring. GAO interviewed faith-based grantees that certified as exempt and a selection of those that did not. GAO also reviewed agency grant documentation and guidance provided to grantees and interviewed cognizant officials to understand the processes FBOs must follow to certify as exempt.

View [GAO-18-164](#). For more information, contact Diana Maurer at (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov); or Cindy Brown Barnes at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov).

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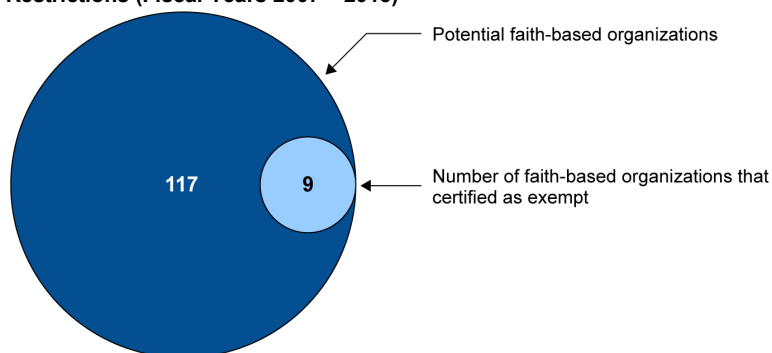
## FAITH-BASED GRANTEES

### Few Have Sought Exemptions from Nondiscrimination Laws Related to Religious-Based Hiring

## What GAO Found

From fiscal years 2007 through 2015, few faith-based grantees sought an exemption based on the Religious Freedom Restoration Act of 1993 (RFRA) from nondiscrimination laws related to religious-based hiring. Specifically, GAO found that the Department of Justice (DOJ), Department of Health and Human Services (HHS), and Department of Labor (DOL) awarded funding to at least 2,586 grantees through at least 53 grant programs containing nondiscrimination hiring restrictions during this time. The number of relevant grant programs could be higher, because GAO could not identify all such programs due to data limitations. Across the 3 agencies, GAO identified 117 grantees that were potential Faith-Based Organizations (FBOs). Of the 117 potential FBOs, 9 DOJ grantees were FBOs that certified as being exempt from statutory restrictions on religious-based hiring. GAO interviewed 6 of these FBOs, all of which stated that hiring individuals who share their religious beliefs was critical to their mission, and that had the RFRA exemption not been available to them, they likely would not have sought the grant.

**Number of Potential Faith-Based Grantees Identified as Subject to Statutory Restrictions on Religious-Based Hiring, including Those that Certified They Were Exempt from These Restrictions (Fiscal Years 2007 – 2015)**



Source: GAO analysis of Department of Health and Human Services, Department of Labor and Department of Justice data. | [GAO-18-164](#)

DOJ, DOL, and HHS inform grant applicants and recipients of statutory restrictions on religious-based hiring and processes for obtaining an exemption from such restrictions generally through grant materials. DOJ and DOL also provide relevant information on their web sites. All three agencies require grantees that seek to make employment decisions based on religion to self-certify that they meet requirements to be eligible for an exemption, but vary in how they review and approve requests for exemptions. For example, DOJ, DOL, and HHS have policies requiring grantees to submit their exemption self-certification, but only DOL reviews exemption requests and either approves them or provides a reason for denial.

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## Abbreviations

COPS	Community Oriented Policing Services
DOJ	Department of Justice
DOL	Department of Labor
EIN	Employer Identification Number
ETA	Employment and Training Administration
FBO	Faith-Based Organizations
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IRS	Internal Revenue Service
NTEE	National Taxonomy of Exempt Entities
OJP	Office of Justice Programs
OLC	Office of Legal Counsel
OVW	Office on Violence against Women
PATH	Projects for Assistance in Transition from Homelessness
RFRA	Religious Freedom Restoration Act
SAMHSA	Substance Abuse and Mental Health Services Administration

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October 5, 2017

Congressional Requesters:

Each year the federal government provides billions of dollars to organizations that provide social services to needy families and individuals. Some of these funds are provided through competitive grants to faith-based organizations (FBOs), which may include religious groups, like churches, mosques, synagogues, and temples, or charitable organizations affiliated with religious groups.<sup>1</sup>

In some instances, FBOs believe it is necessary to only hire individuals who share their religious beliefs in order to carry out their mission. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on religion, as well as other factors such as race, color, sex, and national origin.<sup>2</sup> However, section 702(a) of the Act exempts FBOs with respect to basing employment decisions on religion, thereby permitting FBOs to intentionally, and exclusively, hire individuals who share their religious beliefs.<sup>3</sup> In light of section 702(a), FBOs that receive federal grant funding have generally been permitted to make employment decisions based on religion.<sup>4</sup> There are, however, certain federal grant programs that are subject to statutory restrictions that prohibit grant recipients from using grant funding, in whole or in part, to discriminate or deny employment on the basis of religion, among other factors.

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<sup>1</sup>There is no formal, federal-level definition of faith-based or religious organizations. For the purposes of this report, the term FBO often refers to a religious group or charitable organizations affiliated with a religious group.

<sup>2</sup>Pub. L. No. 88-352, tit. VII, 78 Stat. 253, 255 (codified at 42 U.S.C. §§ 2000e et seq.).

<sup>3</sup>See 42 U.S.C. § 2000e-1(a).

<sup>4</sup>Some agency regulations explicitly state that a religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion in section 702(a) of the Civil Rights Act of 1964 is not forfeited when the organization receives financial assistance from the government. See, e.g., 24 C.F.R. § 5.109(i) (HUD); 28 C.F.R. § 38.5(e) (DOJ); 29 C.F.R. § 2.37 (DOL); 34 C.F.R. § 75.52(g) (Education); 45 C.F.R. § 87.3(f) (HHS). FBOs that receive federal funding are subject to other religious nondiscrimination requirements. For example, FBOs may not use funds for explicitly religious activities such as worship, prayer, or proselytizing, and all services offered by FBOs receiving federal funds must be provided to qualified beneficiaries regardless of the religious or nonreligious belief of the individuals. See, e.g., 24 C.F.R. § 578.87; 28 C.F.R. § 38.5(a); 29 C.F.R. § 2.33; 42 C.F.R. § 54a.4; 45 C.F.R. § 87.3.

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In 2005, the Office of Justice Programs (OJP) within the Department of Justice (DOJ) awarded grant funding to World Vision, a FBO, under a program that was subject to a statutory provision that prohibited recipients from considering religion when making employment decisions in connection with the grant. World Vision had a policy to hire only Christian staff in order to maintain its identity as a Christian organization. OJP informed World Vision about the grant program's statutory restriction, which prohibited religious-based hiring. World Vision petitioned OJP arguing that it should be exempted from the statutory restriction based on the Religious Freedom Restoration Act of 1993 (RFRA). Although RFRA does not explicitly address religious-based hiring, under RFRA, the government may not substantially burden a person's exercise of religion, unless it can prove a compelling interest in doing so.<sup>5</sup> World Vision argued that being required to comply with the restriction substantially burdened its exercise of religion and that the government did not have a compelling interest in prohibiting World Vision from making religious-based hiring decisions. In response, DOJ's Office of Legal Counsel (OLC) issued an opinion in June 2007 stating that RFRA could be reasonably construed to require OJP to exempt World Vision from the statutory requirement restricting federal grantees from hiring on the basis of religion.<sup>6</sup> Pursuant to this OLC opinion, and RFRA, certain federal agencies have permitted FBOs that receive funding under a program that is subject to a statutory restriction on religious-based hiring to certify that they are exempt from such restrictions.

Since OLC issued this opinion, however, the extent to which faith-based grantees have certified that they are exempt from statutory restrictions on religious-based hiring is not readily available. You asked us to examine the extent of use and the various procedures regarding these exemptions. This report addresses the following questions:

1. What is known about faith-based grantees that have certified that they are exempt from statutory restrictions on religious-based hiring, per RFRA, since 2007?

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<sup>5</sup>Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §§ 2000bb-2000bb-4).

<sup>6</sup>*Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162 (2007). OLC opinions represent OLC's advice to a particular client agency. Like a judicial opinion, the OLC opinion may be relevant to other situations that raise similar legal questions. The applicability of the analysis to such situations is evaluated by the relevant agency on a case-by-case basis.

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2. What processes do selected federal agencies use to notify grantees about statutory restrictions on religious-based hiring and the related exemption, per RFRA, and what processes do agencies require FBOs to follow to demonstrate they are eligible for an exemption?

In conducting our work, we reviewed the RFRA, the OLC opinion, laws and regulations related to religious-based hiring, and our prior work on the federal government's efforts to monitor FBOs and their performance.<sup>7</sup> We sought to include federal agencies that, because of their mission, may be likely to provide funding to FBOs. Therefore, we selected the five agencies required by Executive Order 13198 to establish a Center for Faith-Based and Community Initiatives: DOJ, Department of Education (Education), Department of Health and Human Services (HHS), Department of Housing and Urban Development (HUD), and Department of Labor (DOL).<sup>8</sup> These centers were established in each department to help the federal government coordinate a national effort to expand opportunities for faith-based and other community organizations and strengthen their capacity to meet social needs in American communities.

To address our first objective, we asked each agency to identify any grantees that certified they were exempt from statutory restrictions on religious-based hiring. We also asked each agency to identify all grant programs that met the following criteria—the grant program was subject to a statutory restriction on religious-based hiring; nonprofits, including FBOs, were eligible to be primary recipients of the grant funding;<sup>9</sup> and funding was awarded during fiscal years 2007 through 2015. We selected this timeframe because it covered the period immediately after the OLC opinion was issued through the most recent fiscal year for which grant awards had been announced at the start of our review. We subsequently removed Education and HUD from our scope after the agencies reported that they did not have any grant programs that met our criteria.

We could not determine the complete universe of FBOs that are eligible to be primary recipients of grant funding or the amount of federal funds

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<sup>7</sup>GAO, *Faith-Based and Community Initiative: Improvements in Monitoring Grantees and Measuring Performance Could Enhance Accountability*, [GAO-06-616](#) (Washington, D.C.: June 19, 2006).

<sup>8</sup>See Exec. Order 13,198, 66 Fed. Reg. 8497 (Jan. 29, 2001).

<sup>9</sup>FBOs may be eligible to be sub-grantees, but not primary grantees, for other grant programs that have statutory restrictions on religious-based hiring, but we did not include sub-grantees in the scope of this review.

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they receive because DOJ, DOL, and HHS do not maintain, and are not required to maintain, information on whether or not an organization is an FBO. Also, there is no formal, federal-level definition of FBOs, which makes it difficult to identify and count them. In addition, DOJ was unable to identify the total number of grant programs from fiscal years 2007 through 2015 that were subject to nondiscrimination provisions and for which nonprofits, including FBOs, were eligible to be primary recipients of grant funding, in time for our review. As a result, the information we received may not represent the complete number of DOJ grant programs and grantees subject to the provisions; therefore, we use the term “at least” in our report because the number of relevant grant programs could be higher.

Because DOJ’s OJP and Community Oriented Policing Services (COPS) components, DOL, and HHS do not collect information on which grantees are FBOs and potentially eligible for an exemption, we sought other ways to identify potential FBOs. After reviewing Internal Revenue Service (IRS) documents, in particular IRS Publication 4838, Instructions for Requesting Information on Exempt Organizations (Effective January 2010), we determined that the IRS collects and maintains data on tax-exempt organizations that could indicate whether the organizations are faith-based.<sup>10</sup> In addition, DOJ’s Office on Violence Against Women (OVW) component utilized progress reports that allow grantees to self-identify as FBOs. We asked DOJ, DOL, and HHS to provide information, including name, contact information, and Employer Identification Number (EIN), for all of the grantees that received funding for each of the grant programs that met our criteria. Additionally, we contracted with LexisNexis to provide us with the relevant IRS data for each of the grantees.<sup>11</sup> We

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<sup>10</sup>We identified five IRS data fields for tax-exempt organizations that include religious-based codes. They include: Classification (value of “Religious Organization” or “Apostolic and Religious Organization”); National Taxonomy of Exempt Entities (value of “O55 Youth Development – Religious Leadership” or values that begin with “X” indicating Religion Related); Private Foundation Indicator (value of “Church”); Filing Requirements (value of “990 – Not required to file (church)” or “990 – Not required to file (religious organization)”); and Principal Activity (value of “Church, Synagogue, etc.,” “Association or convention of churches,” “Religious order,” “Church auxiliary,” “Mission,” “Missionary activities,” “Evangelism,” “Religious publishing activities – Book store,” “Religious publishing activities - Genealogical activities,” or “Other religious activities”).

<sup>11</sup>LexisNexis is a global provider of legal, regulatory and business information and analytics. LexisNexis conducted research on our behalf through a large volume batch process. Using a copy of the list of grant recipients provided by us, LexisNexis queried the Tax Analysts Exempt Organizations master list from IRS of more than one million exempt organizations, and GuideStar, which maintains annual financial returns (IRS Form 990 information) filed by nonprofit organizations.



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analyzed the IRS data to determine which grantees had at least one faith-based indicator; and for the purpose of our review, we refer to such grantees as potential FBOs.<sup>12</sup> If DOJ, DOL, or HHS had potential FBOs, we provided the agency with a list of these grantees and asked them to confirm whether any of these grantees certified that they were exempt from statutory restrictions on religious-based hiring.<sup>13</sup>

We contacted all nine of the grantees that the agencies identified as having certified that they were exempt, and six responded to our interview requests. These interviews yielded information on how the grantees certified that they were exempt from restrictions on religious-based hiring; why they determined it was important to hire someone who shared their religious beliefs; and what they would have done had the exemption option not been available to them. Additionally, we contacted all 35 potential faith-based grantees we identified that agencies reported had not filed a self-certification to be exempted from religious-based hiring restrictions that were awarded funding in fiscal years 2014 and 2015 through any of the grant programs that met our criteria. We selected this timeframe to increase the likelihood that grantees would be able to recall the details of the grant application process. Five of the 35 potential faith-based grantees responded to our interview request. We interviewed these faith-based grantees to discuss, among other things, whether the grantees were familiar with the exemption option and why they decided not to seek the exemption.<sup>14</sup>

To address our second objective, we obtained and reviewed grant solicitations, language of the relevant statutory restrictions, grant applications, agency policies, and exemption documentation submitted by faith-based grantees. To better understand the agencies' familiarity with the OLC opinion and the processes the agencies have in place to accept and review exemption documentation, we interviewed agency officials and attorneys from DOJ, DOL, and HHS.

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<sup>12</sup>Information from IRS indicators of potential faith-based organizations may be over or under inclusive. There is no definition for FBOs; as a result, outside of cases where grantees self-identify as an FBO, there may be FBOs we have not identified, and some of the grantees we have identified as potential FBOs may not actually be FBOs.

<sup>13</sup>DOJ had already provided us with information on grantees that certified that they were exempt from statutory restrictions on religious-based hiring, per RFRA, but used our list to then confirm that no additional grantees certified that they were exempt.

<sup>14</sup>One of the 5 grantees provided written responses to these questions.

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We conducted this performance audit from April 2016 to October 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Few Grantees Certified They Were Exempt from Statutory Restrictions on Religious-Based Hiring

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### Nine DOJ Grantees Certified They Were Exempt from Statutory Restrictions on Religious-Based Hiring

From 2007 to 2015, HHS, DOL, and DOJ awarded funding to at least 2,586 grantees through at least 53 grant programs that were subject to statutory restrictions on religious-based hiring.<sup>15</sup> Specifically:

- HHS identified one grant program subject to statutory restrictions on religious-based hiring for which nonprofits were eligible to be primary recipients—the Projects for Assistance in Transition from Homelessness (PATH) program, which is administered by the Substance Abuse and Mental Health Services Administration

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<sup>15</sup>We asked DOJ, DOL, and HHS to provide us with information on all grantees across all grant programs that met the following criteria: subject to statutory restrictions on religious-based hiring; nonprofit organizations were eligible to be primary recipients; and funding was awarded during fiscal years 2007 to 2015. DOL and HHS provided us with a list of all grantees for the 18 and 1 grant programs, respectively, that met our criteria. However, DOJ only provided us with the list of nonprofit grant recipients, as opposed to all recipients, and included grantees not subject to statutory restrictions on religious-based hiring and therefore outside our scope. Therefore, the number of grantees subject to statutory restrictions on religious-based hiring from 2007 to 2015 is not comparable across all agencies. Some grantees may be award recipients across different years. However, we only include unique instances of each grantee awarded grants from each agency.

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(SAMHSA).<sup>16</sup> Generally, only states are eligible to be primary recipients for PATH grant awards. However, HHS may award PATH grants directly to public or nonprofit entities if a state does not submit an application or does not meet program requirements. From this program, no grants were awarded to nonprofit organizations and therefore no FBOs were awarded grants.

- DOL identified 18 grant programs subject to statutory restrictions on religious-based hiring for which nonprofits were eligible to be primary recipients. All 18 of these grant programs were in DOL's Employment and Training Administration (ETA). From these 18 programs, 931 grantees were awarded grants, including 19 we identified as potential FBOs.
- DOJ identified at least 34 relevant grant programs administered by OVW, COPS, and six different program offices within OJP that were subject to statutory restrictions on religious-based hiring. The 34 relevant grant programs represent the minimum number of grant programs that were subject to nondiscrimination provisions and for which nonprofit organizations were eligible from fiscal years 2007 through 2015. The number of relevant grant programs could be higher. As discussed below, OJP was unable to identify the total number of relevant grant programs and total number grantees awarded grants under these programs, including potential FBOs. More specifically within DOJ:
  - OVW identified 20 grant programs subject to statutory restrictions on religious-based hiring. From these 20 programs, 604 grantees

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<sup>16</sup>SAMHSA is the agency within HHS that leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities. A statute applicable to HHS programs provides that "[a] religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program." See 42 U.S.C. § 290kk-1(e). This provision specifically makes the nondiscrimination provision inapplicable to religious organizations with respect to employment practices. However, 42 C.F.R. § 54.6 establishes the process by which grantees may show that they are eligible for the exemption. Although other HHS programs may be subject to statutory restrictions on religious-based hiring, nonprofits are ineligible to be primary grantees for those programs; therefore, those programs were not within the scope of our review.

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were awarded grants, including 25 that OVW identified as potential FBOs.<sup>17</sup>

- OJP identified at least 10 grant programs subject to statutory restrictions on religious-based hiring.<sup>18</sup> According to officials, OJP was not able to readily identify grant solicitations that were available to nonprofit organizations from fiscal years 2007 to 2015 and subject to statutory restrictions on religious-based hiring. This effort, according to OJP, would have required a manual search of each grant solicitation. However, OJP was able to identify at least 10 grant programs subject to statutory restrictions on religious-based hiring.<sup>19</sup> From these 10 programs, at least 1,113 grantees were awarded grants, including 74 we identified as potential FBOs.
- COPS identified four grant programs subject to statutory restrictions on religious-based hiring. From these four programs, 57 grantees were awarded grants, none of which were potential FBOs.

Of the 117 potential FBOs we identified across the three agencies, nine faith-based grantees, all of which were awarded DOJ grants, certified that they were exempt from statutory restrictions on religious-based hiring (see figure 1).<sup>20</sup> These 9 grantees were, therefore, allowed to consider a prospective employee's religious faith when making employment

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<sup>17</sup>DOJ OVW provided an additional list of grantees after we had identified potential FBOs using IRS data from LexisNexis. In the second list of grantees, OVW maintained data on whether the grantee was a faith-based organization. Therefore, for the second set of data, which consisted of 604 grantees, we used OVW's designation of whether the grantee was a faith-based organization instead of using IRS data from LexisNexis.

<sup>18</sup>The 10 programs OJP identified are referred to as "funding sources" within OJP. The funding sources are used to track grantees in OJP's internal grants management database. The funding sources do not always match the grant program name specified in the statute that authorizes the grant program. However, for consistency purposes, we refer to the funding sources as grant programs.

<sup>19</sup>OJP initially provided us with a list of all nonprofits awarded grants from 2007-2015, including those not subject to statutory restrictions on religious-based hiring. Of those grantees, we identified approximately 161 which may be considered potential FBOs. OJP then acknowledged that 74 of the approximately 161 potential FBOs we identified had been awarded grants subject to nondiscrimination provisions. OJP awarded grants for the 74 potential FBOs via 10 OJP grant programs. Therefore, we are reporting that "at least" 10 DOJ OJP grant programs are subject to nondiscrimination provisions.

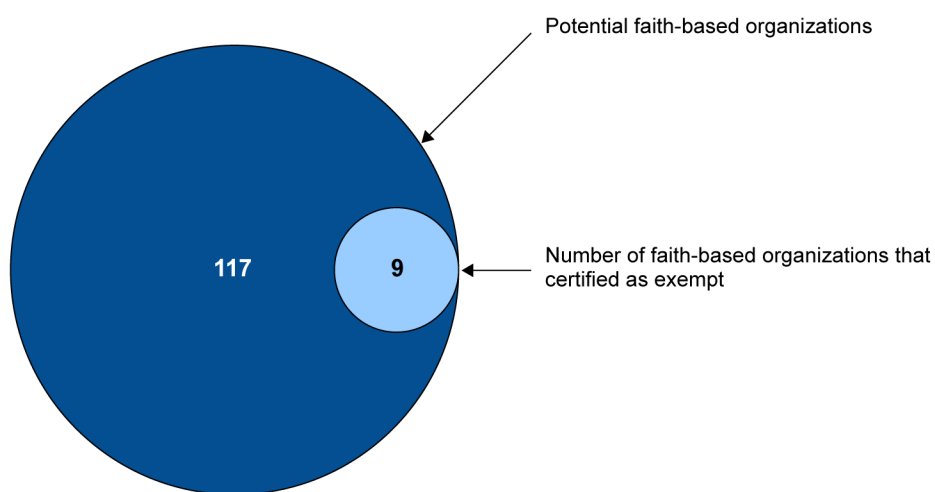
<sup>20</sup>The number of grantees from DOJ, DOL, and HHS may exceed the total number of unique grantees we identified across agencies. For the individual agency counts of grantees, we included unique grantees within the particular agency.

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decisions in connection with the grant. DOL and HHS reported that none of their grantees have sought exemptions from religious-based hiring provisions.

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**Figure 1: Number of Potential Faith-Based Grantees Identified as Subject to Statutory Restrictions on Religious-Based Hiring, including Those that Certified They Were Exempt from These Restrictions (Fiscal Years 2007 – 2015)**



Source: GAO analysis of Department of Health and Human Services, Department of Labor and Department of Justice data. | GAO-18-164

As shown in Table 1, 8 of the 9 faith-based grantees that certified that they were exempt were awarded funding through DOJ grant programs from fiscal years 2008 to 2010. The remaining exempted grantee received a funding award in 2015. The total funding awarded to the 9 grantees was approximately \$3.2 million, which is less than 1 percent of the \$804 million in grants that DOJ awarded that are subject to statutory restrictions from fiscal years 2007 to 2015.<sup>21</sup> DOJ reported that 8 of these grantees received the awards on a noncompetitive basis because they were identified for funding in a DOJ appropriation or accompanying committee report.

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<sup>21</sup>This table includes award amounts awarded by OVW and COPS for grant programs subject to statutory restrictions in religious-based hiring. It also includes OJP award amounts, but is limited to the 10 programs that OJP was able to determine were subject to statutory restrictions on religious-based hiring.

**Table 1: Department of Justice Grants Awarded to Faith-Based Organizations that Certified that They Were Exempt from Statutory Restrictions on Religious-Based Hiring, per the Religious Freedom Restoration Act (RFRA), During Fiscal Years 2007-2015**

<b>Grantee</b>	<b>Grant Program</b>	<b>Award Amount</b>	<b>Date of RFRA exemption</b>	<b>Fiscal Year</b>
Detroit Rescue Mission Ministries	Juvenile Justice Programs - Part E: Developing New Initiatives	\$469,533	9/25/2009	2008
Long Island Teen Challenge	Juvenile Justice Programs - Part E: Developing New Initiatives	\$44,717	9/28/2009	2008
Denver Rescue Mission	Byrne Discretionary Grants	\$268,305	11/23/2009	2008
Straight Ahead Ministries	Juvenile Justice Programs - Part E: Developing New Initiatives	\$89,435	4/14/2009	2008
World Impact, Inc.	Byrne Discretionary Grants	\$200,000	9/16/2009	2009
Grace Schools, Inc.	Byrne Discretionary Grants	\$1,073,218	9/15/2008	2008
Indiana Teen Challenge, Inc. <sup>a</sup>	Juvenile Justice Programs - Part E: Developing New Initiatives	\$89,435	9/27/2009	2008
Indiana Teen Challenge, Inc. <sup>a</sup>	Juvenile Justice Programs - Part E: Developing New Initiatives	\$50,000	9/27/2009	2009
World Vision, Inc. <sup>a</sup>	Juvenile Justice Programs - Part E: Developing New Initiatives	\$134,152	6/12/2008	2008

Grantee	Grant Program	Award Amount	Date of RFRA exemption	Fiscal Year
World Vision, Inc. <sup>a</sup>	Juvenile Justice Programs - Part E: Developing New Initiatives	\$250,000	6/12/2009	2009
World Vision, Inc. <sup>a</sup>	Byrne Discretionary Grants	\$275,000	6/12/2008	2010
Messiah College	Office on Violence Against Women Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus	\$298,910	9/10/2015	2015

Source: Department of Justice | GAO-18-164

<sup>a</sup> Note: Grantees that are listed more than once received multiple grant awards in different fiscal years. The Department of Justice (DOJ) reported that 8 of the 9 grantees received the awards on a noncompetitive basis because they were identified in a DOJ appropriation or accompanying committee report.

### Exempted Faith-Based Grantees Stated that Hiring Staff to Assist with Grant Activities on the Basis of Religion Was Critical to Their Mission

We interviewed 6 of the 9 grantees that certified that they were exempt from religious-based hiring restrictions.<sup>22</sup> Each of the 6 grantees that we interviewed stated that:

- hiring individuals who share their religious beliefs to assist with grant activities was critical to their mission and organizational success;
- they include a “statement of faith” on their organization’s job application form and ask the applicant to attest to the statement of faith, or hired individuals of the same faith already employed within their organization; and
- had the RFRA exemption not been available to them, they likely would not have sought the grant or they would have had to seek executive-level approval within their organization to apply for the grant.<sup>23</sup>

At least 3 of the 6 grantees stated that they were a recipient of other federal grant funding, but those grants were not subject to statutory restrictions on religious-based hiring, and therefore did not require an

<sup>22</sup>The other 3 grantees did not respond to our request to meet with them.

<sup>23</sup>For example, one grantee that certified as exempt told us that they would have needed approval from their organization’s board of directors to apply for any grant that did not allow their organization to consider religion when making employment decisions.

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exemption to make hiring decisions based on religion.<sup>24</sup> Based on grant award documentation, 6 of the 9 grantees used the funding to provide assistance to at-risk youth. However, other services that the remaining grantees provided included first responder training and programs to reduce homelessness, among others, and support and response efforts for victims of sexual assault.

As discussed earlier, we also selected 35 potential faith-based grantees that received funding in fiscal years 2014 and 2015 and that agencies reported had not filed a self-certification to be exempted from religious-based hiring restrictions. We interviewed 5 of these 35 grantees to discuss, among other things, whether the grantees were familiar with the exemption options.<sup>25</sup> The five faith-based grantees said they did not recall seeing information about the exemption option in the grant application or grant award documentation, or were not looking for information about the exemption because they were not considering religion in their hiring decisions. Two of the faith-based grantees that did not certify as exempt told us that, while they ask that the applicant have an understanding of the traditions, culture, or languages of their religion, they do not require applicants to share the same faith.

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<sup>24</sup>The remaining grantees either were not familiar with other grants sought within their organization, were uncertain whether the other federal grant funding they received was subject to statutory restrictions on religious-based hiring, or did not provide a response to our question.

<sup>25</sup>One of the 5 grantees provided written comments. The remaining 30 grantees did not respond to our request for interviews.



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## Federal Agencies Primarily Use Grant Documentation to Notify Grantees of Restrictions on Religious-Based Hiring and Requirements for Demonstrating Eligibility for Exemptions

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### Agencies Notify Grantees of Statutory Restrictions on Religious-Based Hiring through Grant Materials that Identify Relevant Regulations

DOJ, DOL, and HHS inform grant applicants and recipients of statutory restrictions on religious-based hiring and processes for obtaining an exemption from such restrictions through grant announcements. The agencies also use additional methods that varied across all three agencies for providing this information to grantees.

DOJ specifically made this information available on agency web pages as well as in the documentation that is provided to grant recipients. DOJ's Center for Faith-Based and Neighborhood Partnerships has a web page specifically for FBOs that have applied for or received grant funding.<sup>26</sup> This web page includes a list of Frequently Asked Questions, including one that addresses hiring employees with federal grant funds. The Office for Civil Rights within OJP also provides information on its web page regarding how FBOs may certify that they are exempt from statutory restrictions on religious-based hiring.<sup>27</sup> Additionally, it includes a link to a copy of DOJ's exemption certification form. We interviewed representatives from four potential faith-based grantees that received a DOJ grant in fiscal years 2014 or 2015 and did not certify for an

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<sup>26</sup><https://ojp.gov/fbnp/index.htm>. Accessed May 12, 2017.

<sup>27</sup><https://ojp.gov/funding/Explore/SolicitationRequirements/CivilRightsRequirements.htm#Faith>. Accessed March 17, 2017.

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exemption. All four grantees said they could not recall seeing information in the grant application or award documentation about the exemption option or were not looking for it because they were not considering religion in their hiring decisions.

Similarly, DOL has a web page devoted specifically to explaining statutory restrictions on religious-based hiring to faith-based grant applicants and recipients, which also covers the process for seeking exemptions from the restrictions.<sup>28</sup> The web page makes reference to DOL's regulations related to religious-based hiring by FBOs and also has a link to the June 2007 OLC opinion.<sup>29</sup> Additionally, DOL has prepared a guidance document—available from its grants program overview web page—that explains in detail the process for seeking exemptions and how they are reviewed and approved. A representative from the one potential FBO we interviewed that received a DOL grant in fiscal years 2014 or 2015 but did not certify that they were exempt could not recall seeing information about the exemption option.

Lastly, in addition to providing information in grant announcements, HHS provides all SAMHSA grant applicants seeking funds for substance abuse prevention and treatment services with a form that cites laws and regulations governing religious organizations that receive SAMHSA funding, including the regulation that outlines the exemption process.<sup>30</sup> HHS requires the applicants to sign the form, and in doing so, the applicants are certifying that they are aware of and will comply with applicable laws that allow FBOs to provide SAMHSA-funded services without impairing their religious character and without diminishing the religious freedom of those who receive their services.

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<sup>28</sup><https://www.dol.gov/oasam/grants/RFRA-Guidance.htm>. Accessed April 25, 2017.

<sup>29</sup>See 29 C.F.R. pt. 2, subpart D.

<sup>30</sup>See 42 C.F.R. § 54.6.

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## Agencies Rely on Grantees to Self-Certify that They Meet Eligibility Requirements for Exemptions from Statutory Restrictions on Religious-Based Hiring

DOJ, DOL, and HHS all require grantees that seek to make employment decisions based on religion to self-certify that they meet requirements to be eligible for an exemption from statutory restrictions on religious-based hiring, but vary in how they review and approve requests for exemptions.

### Department of Justice

DOJ faith-based grantees that wish to demonstrate they are eligible for an exemption from statutory restrictions on religious-based hiring must complete and sign a "Certificate of Exemption for Hiring Practices on the Basis of Religion." If an applicant is awarded a grant, it must submit a copy of the signed version of this form through DOJ's Grants Management System. By signing the form, the grantee is certifying that:

- federally-funded services will be offered to all qualified beneficiaries without regard for the religious or nonreligious beliefs of those individuals;
- activities that contain inherently religious content will be kept separate from grant-related activities or offered to clients voluntarily; and
- the organization believes that the services provided are an expression of its religious beliefs, employing persons of a particular religion is important to its mission, and not being able to hire such persons would be a substantial burden to the organization.

DOJ does not review these self-certification submissions to approve or deny the requests. It only reviews them for any indication that the applicant may not be an FBO, in which case DOJ officials said they would follow up with the grantee to get clarification. Agency officials also said DOJ would review any self-certifications as part of grantee compliance reviews and in response to complaints from other parties. The self-certification form covers the entire grant award period, and can cover multiple DOJ grants as long as all of the grant programs are subject to the same statutory restrictions on religious-based hiring. There is no deadline for submitting the self-certification and DOJ officials told us that while it is understood that self-certifications should be submitted before grant funds are dispersed, grantees do not need to do so.

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Department of Labor

DOL faith-based grantees that wish to demonstrate they are eligible for an exemption also self-certify, but are required to submit their request to DOL for review and approval by the Assistant Secretary responsible for issuing or administering the grant.<sup>31</sup> In its request, the grantee must certify that:

- providing the services to be funded by the grant is an exercise of its religious beliefs;
- without the grant, its ability to provide the services funded by the grant would be substantially diminished, and providing those services is demonstrably tied to the recipient's religious beliefs;
- employing individuals of a particular religious belief is important to its religious identity, autonomy, or communal religious exercise;
- conditioning the grant award on compliance with the nondiscrimination provision creates substantial pressure on it, in providing the services being funded, to abandon its belief that hiring based on religion is important to its religious exercise; and
- it will comply with the requirements of 29 C.F.R. part 2, subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

The Assistant Secretary's office then reviews exemption requests and approves them or provides a reason for denial. DOL has instituted a 30-day deadline to reply back to the grant applicant with its decision. DOL implemented this process in response to the 2007 OLC opinion. However, agency officials said they have never used this process because, as explained earlier in this report, DOL has not received any exemption requests. They also told us exemptions are only valid for the grant award period and new requests must be re-submitted if the grant is renewed. However, an exemption can cover multiple grants to the same grantee as long as those grants are received from the same DOL component. Lastly, the officials said that grant funds can be disbursed before the grantee has submitted an exemption request.

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<sup>31</sup>DOL's instructions request, but do not require, that grantees submit their exemption request within 5 business days of receiving their grant award.

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Department of Health and  
Human Services

HHS faith-based grantees seeking to demonstrate that they are eligible for an exemption from statutory restrictions on religious-based hiring must self-certify that they meet several requirements outlined in HHS regulations.<sup>32</sup> To demonstrate its eligibility for an exemption, a grantee must certify that:

- it sincerely believes employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise;
- it makes employment decisions on a religious basis in analogous programs;
- it believes the grant would materially affect its ability to provide the type of services in question; and
- providing the services in question is expressive of its values or mission.

Grantees must then submit their self-certification to HHS requesting an exemption, and maintain supporting justification documentation on file if needed for future review. However, as explained earlier in this report, there is currently only one HHS grant program that is subject to a statutory restriction on religious-based hiring and for which FBOs are eligible to be primary recipients—the PATH program.<sup>33</sup> We did not identify any faith-based recipients of grants from this program from fiscal years 2007 through 2015, and HHS officials confirmed that no nonprofit entities received any grants from the program during this time.

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## Agency Comments

We provided a draft of this report to the Departments of Labor, Justice, and Health and Human Services. Although the agencies did not provide formal comments, the Departments of Justice and Health and Human Services did provide technical comments that we incorporated, as appropriate.

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<sup>32</sup>See 42 C.F.R. § 54.6.

<sup>33</sup>Nonprofit entities, including FBOs, are not primary grantees under this program. States are the primary grantees and allotted awards from annual appropriations through a distribution formula. If a state declines or does not submit an application for its allotment, those funds become available for nonprofit organizations to apply for. HHS officials informed us that since 2007, no state has failed to claim its allotment.

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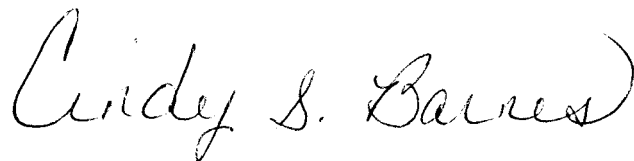
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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time we will send copies of this report to the Secretaries of Health and Human Services and Labor; the Attorney General; and appropriate congressional committees. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact either Diana Maurer at (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov); or Cindy Brown Barnes at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in Appendix I.



Diana C. Maurer  
Director, Homeland Security and Justice Issues



Cindy S. Brown Barnes  
Director, Education, Workforce, and Income Security Issues

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*List of Requesters*

The Honorable Robert C. (Bobby) Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
House of Representatives

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Diana Maurer, (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov) or Cindy Brown Barnes, (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Mary Crenshaw, Adam Hoffman, and Kristy Love (Assistant Directors); David Ballard; Dominick Dale; Michele Fejfar; Melissa Hargy; Joel Marus; Heidi Nielson; Kelly Rolfes-Haase; and Katrina Taylor made key contributions to this report.



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