



GUIDANCE FOR FAITH-BASED ORGANIZATIONS IN PARTNERING WITH THE FEDERAL GOVERNMENT

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Guiding Principles

This presentation is not legal advice customized to your specific situation, nor is it a comprehensive statement of the law of church-state relations

You may wish to consult with a lawyer, the agency that runs the relevant program, or with our office

FAITH-BASED AND COMMUNITY INITIATIVE

- On January 29, 2001, in his first executive order, President Bush created the Faith-Based and Community Initiative.
- This initiative was to be a cornerstone of his administration.
- What was the central idea of the initiative?

Equal treatment



Equal Treatment

- Compassionate care on the same footing as secular groups
 - A level playing field
 - Within Constitutional guidelines



Equal Treatment

- Regulations have been adopted by the different Federal departments and agencies to ensure the equal treatment of faith-based organizations. *Examples:*
 - DOJ's Equal Treatment Regulations: 28 CFR 38.1 and 38.2
 - HHS's Equal Treatment Regulations: 45 CFR 87.1 and 87.2



Level Playing Field

- **No discrimination** for or against an organization on the basis of religious character or affiliation
- **No disqualification** of an organization in programs because of religious motivations or religious character or affiliation
- **No singling out** of faith-based groups for special monitoring or assurances



Constitutional Restrictions:

Direct Funding

- **Direct Federal Funding:**
 - You receive money **directly** from the federal government or from a state/local government/private entity that received the money **directly** from the federal government
 - Examples: **discretionary grants, formula and block grants to state/local governments, contracts and cooperative agreements, pass-throughs (sub-grants, sub-contracts, etc.)**



Constitutional Restrictions

Direct Funding

- Direct federal funding **cannot** be used for “inherently religious” activities:
 - Religious worship
 - Prayer
 - Bible study
 - Evangelization



Constitutional Restrictions

Direct Funding

- **However**, you can still engage in inherently religious activities **if they are**:
 - Paid for with private funds; and
 - Separated in time **or** place from government-funded activities



Constitutional Restrictions

Direct Funding

- Time restriction:
 - You can hold a bible study **in the same room** where you provide government-funded services—the activities just need to be held **at different times**.
- Place restriction:
 - You can hold a worship service **at the same time** when you provide government-funded services—the activities just need to be held **in different rooms**.



Constitutional Restrictions

Direct Funding

- You can also **invite** program participants to join in inherently religious activities if:
 - Participation is truly **voluntary**;
 - Participation or lack thereof will in **no way affect person's ability to receive the government services** you are providing; and
 - Invitees understand that it is not federally-funded



Constitutional Restrictions

Direct Funding

- **FBOs also may retain:**
 - ✓ Religious name
 - ✓ Board members selected on religious basis
 - ✓ Mission statement
 - ✓ Religious activities - so long as they are privately-funded, separated in time or place, and voluntary
 - ✓ Religious symbols, wording, icons, etc., in program facility
 - ✓ Ability to hire based on religious affiliation



Frequently Asked Questions

Direct Funding

Q.

If someone asks me about my faith, can I share it with them?

A.

Yes, you may answer briefly, but a longer discussion either should be postponed or should occur in a different place than where the federally-funded service is being provided.



Frequently Asked Questions

Direct Funding

Q. *Can we use Federal funds to pay staff salaries?*

A. Yes, as long as the staff person spends his or her time on program activities – and not inherently religious activities. If a staffer splits time between program and church activities, keep careful daily timesheets.



Frequently Asked Questions

Direct Funding

Q.

If our organization receives a grant from the Federal government, can it choose to deny services to some people?

A.

No. If you take Federal money you must provide services to all who are eligible.



Frequently Asked Questions

Direct Funding

Q.

Can we buy religious materials with Federal funds?

A.

No. You may not use government funds to buy religious materials. This applies not only to Bibles, Torahs, and Korans, but also to materials used for religious activities.



Frequently Asked Questions

Direct Funding

Q.

Can we still get government funds if religion is integrated throughout our program and we don't want to separate it?

A.

In most cases, no, because inherently religious activities must be privately-funded, separate, and voluntary.



Constitutional Restrictions

Indirect Funding

- **Indirect Federal Funding:**
 - Where the **beneficiaries** of a government program **themselves** choose where the money will be spent **by choosing their service provider**
 - Example: **Vouchers**



Constitutional Restrictions

Indirect Funding

- If there is at least one (1) secular provider the client can choose from, an FBO may legally include inherently religious activities (i.e., worship, prayer, bible study, evangelization) in the program even though federal money is being used.
- Thus, **vouchers/indirect funding relieves you of having to separate inherently religious activities by time or place.**



Religious Hiring

- FBOs may consider religion when hiring staff for a government-funded program (under Title VII of the Civil Rights Act of 1964) **unless** the statute creating the grant program contains a prohibition on doing so.
 - **However, under the Religious Freedom Restoration Act of 1993, an FBO may (and must) be granted the right to consider religion in hiring if it is important to its religion.**



“To Accept or Not to Accept”

- **Pros:**

- Funding can be used to start-up a new service or ministry or to expand an existing one
- If vouchers (or another form of indirect funding) are used, you do not have to separate inherently religious activities from government-funded activities
- Even if direct funding is involved, you can still invite people to attend inherently religious activities
- You can continue to consider religion when hiring (either under Title VII or under a RFRA waiver)



“To Accept or Not to Accept”

- **Cons:**
 - Government money can become addictive; difficulties could arise if such money runs out.
 - If direct funding is involved, you may not engage in inherently religious activities—i.e., the activities that may make your program successful.



Other Questions?

- ***Review [Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government](http://www.whitehouse.gov/government/fbci/guidance/index.html)***

(<http://www.whitehouse.gov/government/fbci/guidance/index.html>)

- **Follow up with the “Program Contact” or with the Dept. of Justice’s Task Force for Faith-Based and Community Initiatives**
- **Consult a lawyer**



For Assistance, contact:



**The Task Force on Faith-Based and
Community Initiatives
U.S. Department of Justice**

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