

## **Removing Barriers to Local Governments Entering Into Partnerships with Faith-Based Organizations**

In the not too distant past, confusion surrounding the laws regarding federal funding of religious organizations sometimes dissuaded local governments from entering into productive partnerships with faith-based organizations (FBOs). To clarify how state and local governments may collaborate with FBOs, in 2004 the Department of Justice (DOJ) issued its Equal Treatment for Faith-Based Organizations regulations, 28 C.F.R. pt. 38.

The purpose of these DOJ regulations is to implement President George W. Bush's Executive Order No. 13279, which states that religiously affiliated organizations should be able to compete for federal funding on an equal footing with other organizations. These regulations apply equally to DOJ and state and local governments that receive funds from DOJ.

The regulations ensure a level playing field for the participation of faith-based and other community organizations in DOJ programs in the following ways:

- They prohibit discrimination for or against an organization on the basis of religion, religious belief, or religious character in the receipt, administration, or distribution of federal funds;
- They allow a religious organization that participates in DOJ programs to retain its independence, form of governance, and its mission provided that DOJ funds do not support inherently religious activities (i.e., proselytizing, worship, religious instruction);
- They recognize that funded FBOs may engage in inherently religious activities as long as the activities are separate in time or place from the funded program, and the participation in these activities of individuals receiving funded services is voluntary; and
- They clarify that FBOs can use their facilities to provide DOJ-funded services without removing religious art, icons, scriptures, or other religious symbols.

In general, FBOs that receive funding from DOJ do not forfeit the exemption from the federal prohibition on employment discrimination on the basis of religion in Title VII of the Civil Rights Act of 1964 (See 28 C.F.R. § 38.1(f)). However, FBOs and other subrecipients that receive funding from DOJ under the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act, and the Victims of Crime Act may be subject to the general nondiscrimination provisions in these statutes, which prohibit subrecipients from discriminating in employment on the basis of religion. FBOs applying for DOJ funding or local government applicants that intend to use DOJ funds to partner with FBOs should consult with the appropriate DOJ program office to determine the scope of this requirement.

Notwithstanding the foregoing, however, DOJ's Office of Legal Counsel recently concluded that FBOs, on a case-by-case basis, may be entitled to continue to hire based

on religious affiliation even if the FBO accepts a DOJ grant or subgrant that is subject to a general ban on religious discrimination in staffing. The Department's opinion is summarized at [www.usdoj.gov/fbci/effect-rfra.pdf](http://www.usdoj.gov/fbci/effect-rfra.pdf) and governs all DOJ grant programs for which FBOs are eligible.

DOJ is making it easier in other ways for local governments to enlist FBOs in their efforts to provide services to those in need. For instance, except for funding under the Juvenile Justice and Delinquency Prevention Act, which expressly requires recipient nonprofit organizations to have Section 501(c)(3) status under the Internal Revenue Code, DOJ does not require FBOs that are nonprofit organizations to have Section 501(c)(3) status to be eligible for funding (28 C.F.R. § 38.1(g) & .2(g)). DOJ also plans to introduce the use of vouchers in funded prisoner reentry programs to allow beneficiaries to take advantage of support services that grassroots FBOs provide.

With DOJ funding, local governments have forged creative partnerships with FBOs to assist some of the most vulnerable people in their communities. Here are just two examples:

- The Denver District Attorney's Office partnered with local FBOs to launch CASE (Communities Against Senior Exploitation), a grassroots, prevention program to detect and report fraud that targets the elderly. The project involved recruiting the participation of 210 local FBOs, training 340 clergy and other community leaders on recognizing and reporting fraud, presenting more than 120 seminars on fraud prevention to 4,500 senior citizens and their families, and providing victim assistance to more than 200 seniors and their caregivers. One example of the success of CASE was the high-profile conviction of a father-and-son team who stole the life's savings of an 81-year-old woman. She reported the crime to leaders at her church, who then notified the Denver District Attorney's Office. The success of the CASE program has led to its replication in 23 other cities.
- The local Weed and Seed Site in St. Louis, Missouri supported a hugely successful tax return preparation program for low-income families operated by the Friendly Temple Church. Under the VITA (Volunteer Income Tax Account) Program, the church prepared more than 3,500 tax returns in 2007, resulting in over \$3,750,000 in tax refunds to low income families.

FBOs are eligible to participate in a wide array of programs that are administered by various DOJ funding components, including the Office of Justice Programs (OJP), the Office on Violence Against Women (OVW), and the Federal Bureau of Prisons (BOP).

OJP provides federal leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. OJP consists of the following

bureaus and program offices: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, the Community Capacity Development Office, and the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office.

OVW provides federal leadership to reduce violence against women by expanding the capacity of state, local, tribal, and non-profit entities to respond to violence against women.

BOP protects society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Information regarding funding opportunities available from these DOJ components can be found at [www.usdoj.gov/fbci/fundopp.html](http://www.usdoj.gov/fbci/fundopp.html) and [www.usdoj.gov/10grants/index.html](http://www.usdoj.gov/10grants/index.html).

Under an agreement between the DOJ and the Office of Management and Budget, DOJ is required to notify local governments regarding the Equal Treatment for Faith-Based Organizations regulations. Local governments and FBOs may obtain additional information on this topic from DOJ's Task Force for Faith-Based and Community Initiatives ([www.usdoj.gov/fbci](http://www.usdoj.gov/fbci)).