

Level Playing Field Guidelines

Federal Executive Order 13279, Dec. 12, 2002, "Equal Protection of the Laws for Faith-Based and Community Organizations"

"No organization shall be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs."

Basic Features of the Equal Treatment Guidelines

This is a summary of the guidelines of federal Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations (Dec. 12, 2002), which have been incorporated into the general administrative regulations of federal agencies, and the Charitable Choice regulations.

Organizational eligibility

- no discrimination for or against an applicant because of the applicant's religious character or affiliation
- faith-based organizations are eligible on the same basis as other organizations
- no exclusion of faith-based providers as being "too religious" or "sectarian"
- organizations need not have IRS 501(c)(3) status in order to demonstrate nonprofit status

Rights of faith-based organizations

- may retain religious name and religious mission statement, and select board members on a religious basis
- may maintain their religious mission
- must not be excluded from participation because the organization is motivated by religion to provide social services
- may offer inherently religious activities (separately from the direct-government funded program)
- may maintain a religious atmosphere with icons, religious art, etc.
- separate service organizations formed by houses of worship need not be made secular
- retain the freedom to staff on a religious basis, except when limited by a federal program statute or a state or local procurement law (Charitable Choice overrides state and local restrictions)

Restrictions on all providers

- direct-government funds cannot be used to pay for inherently religious activities
- inherently religious activities must be separated, in time or location, from the directly funded service, and the activities must be voluntary for the beneficiaries

Protections for beneficiaries

- must be served without suffering discrimination because of religion or religious belief
- participation in inherently religious activities cannot be required within the directly funded program
- (if Charitable Choice) government must ensure an alternative to a beneficiary who objects to a religious provider

Equal treatment requirement

- restrictions on the use of federal resources for religious purposes apply equally to secular as to faith-based organizations
- state officials may not require only faith-based organizations to demonstrate that they follow the religious restrictions on the use of federal resources

Indirect government funding

- religion may be incorporated into the indirectly funded service
- religious liberty is protected by choice of provider
- the "this worldly" aims of the government support must be achieved

Suggestions on Partnering with the Government

1. The program must produce “this-worldly” success.
2. The aim of service in partnership with the government is to assist persons, families, and communities who have “this-worldly” needs, and not to add to the membership of your congregation or faith community.
3. A wholistic service may invite beneficiaries into your community, but must not require membership or conversion as the price of receiving the best possible assistance.
4. The accountability, reporting, and performance standards are the same for faith-based and secular organizations.
5. Expect government officials to respect—not convert to—the religious basis of your organization.
6. Limitations on religious expression and activities are necessary in government-funded programs because of the Constitution, because government is coercive, and because the religious convictions of beneficiaries must be safeguarded.
7. Restrictions on religion should be respected because of the law, the terms of a grant or contract, and because of the high value of respecting the convictions of each person.
8. If religion is so interwoven into a service that it cannot be disentangled without damaging the service, then don’t ask for direct government funding for that service.
9. For the sake of effective services, seek to collaborate with other organizations, even if their fundamental convictions are different than yours.
10. Don’t become dependent on government funds: the amount can fluctuate, programs can disappear, restrictions may increase, and dependence on one source of funds is inconsistent with preserving flexibility, independence, and an advocacy role.

Guidelines on Religious Expression

(direct government funding)

1. "Inherently religious activities" include worship, the study of sacred writings, prayer, evangelism, and the teaching of religious doctrines.
2. Legitimate service activities can be performed out of a religious motivation.
3. A activity or decision that would be permissible in a program does not become illegitimate merely because a religion might recommend it.
4. Inherently religious activities may be announced and offered on a voluntary basis, as long as it is clear to beneficiaries that participation is not required and nonparticipation will make no difference to their status or receipt of service.
5. The organization's staff may engage in religious activities outside of the directly funded program.
6. Inherently religious activities must be kept separate, in time or location, from the directly funded program.
7. Inherently religious activities cannot be incorporated into the directly funded program, e.g., by starting a training class with prayer or making the Bible the literacy textbook.
8. Staff may briefly respond to beneficiaries' religious questions, but any extended religious discussion belongs outside the directly funded program.
9. Religious illustrations and stories may be used, along with other examples, provided that their use does not turn a session into religious training instead of its original purpose.
10. In accounting for income and expenditures, the organization must be able to show that the direct government funds were not spent on inherently religious activities.