

U.S. Department of Education

Guidance on Prohibited Uses of Direct Federal Financial Assistance and Protections for Religious Identity

Contents

Prohibited Uses of Direct Federal Financial Assistance	2
Preserving Faith-Based Organizations' Religious Identity	3
Separation of Explicitly Religious Activities	4
Separate and Distinct Programs	4
Separate Presentations.....	5
Explicitly Religious and Anti-Religious Activities.....	6
Cost Allocation	6
Eligibility, Outreach, and Recruitment.....	7
Availability of Separate Religious Programs	7

Prohibited Uses of Direct Federal Financial Assistance

Section 2(g) of Executive Order 13279, as amended by Executive Order 13559, prohibits the use of direct Federal financial assistance to support or engage in "explicitly religious activities," which includes "activities that involve overt religious content such as worship, religious instruction, or proselytization." Other examples of explicitly religious activities and materials include devotional exercises, production or dissemination of devotional guides or other religious materials, or counseling in which counselors introduce religious content: More specifically, in the context of social services, a devotional booklet for a substance abuse program or prisoner re-entry program, or the provision of a 12-step Alcoholics Anonymous program are examples of social service activities that are explicitly religious. 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.

Application of the prohibition against explicitly religious activity must be consistent with the First Amendment of the U.S. Constitution, which both prevents the government from promoting or sponsoring religion and protects privately initiated religious expression and activities from government interference and discrimination. This means that staff carrying out programs supported by direct Federal financial assistance, and the materials disseminated by staff persons in those programs, must be neutral in their treatment of religion. Neither staff nor materials used in these programs should promote, endorse, or favor religious beliefs over nonreligious beliefs, nor should they disparage religious beliefs in any way. Further, they should not express a judgment with regard to religious beliefs or non-belief, or seek to influence the beliefs of participants with respect to religion.

If a grant project is directly supported by Federal financial assistance, program administrators should be aware that the bar against use of Federal financial assistance for explicitly religious activities applies to activities, speech, and materials that are generated or controlled by the administrators, instructors, or officials of the Federally-financed program. The requirement generally does not apply to the activities of persons whose speech is not controlled, encouraged, or approved after the fact by program administrators, instructors, or officials, such as spontaneous comments made by individual beneficiaries in the context of a Federal program. The Supreme Court has repeatedly held that the First Amendment requires that officials and administrators in publicly-funded programs be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression.

These regulations do not apply to research grants made by the Department even though these grants are directly supported under discretionary grants. Research grants are not subject to these regulations because research grants do not provide social services to beneficiaries.

This model guidance applies only to programs supported either in whole or in part through direct Federal financial assistance, and does not apply to programs receiving indirect Federal financial assistance. For a discussion of the distinction between "direct" and "indirect" Federal financial assistance, see Part III.B. of the preamble to the final regulations, on pages 19360-19362, published on April 4, 2014, available at [Federal Agency Final Regulations Implementing Executive Order 13559](#) in text format. A PDF of this document is available at the following address [Federal Agency Final Regulations Implementing Executive Order 13559 \(PDF\)](#)

Currently, the Department administers only one program of indirect Federal financial assistance, the District of Columbia School Choice Incentive Program (DC Choice Program), authorized under sections 3001-3014 of the Scholarships for Opportunity and Results Act (Division C of Pub. L. 112-10, 125 Stat. 199-212 (April 15, 2011), as amended by Public Law 112-92, 125 Stat. 6-7 (Feb. 1, 2012)). This program authorizes parents of students in District of Columbia public schools to use a voucher so their children can attend private schools, instead of attending public schools. Because the families of students select the school the student would attend, not the government or the D.C. Choice grantee, this is a program of indirect Federal financial assistance. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

The restriction against the use of direct Federal financial assistance to support explicitly religious activities might not apply to some programs such as programs where funds are provided to chaplains to work with detainees in detention facilities, or where funds are provided to religious or other organizations for programs in detention facilities in which such organizations assist chaplains in carrying out their duties. *See Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972) (per curiam) (explaining that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty"); *Katcoff v. Marsh*, 755 F.2d 223,234 (2d Cir. 1985) (finding it "readily apparent" that the Government is obligated by the First Amendment "to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations is not available to them"); *Sch. Dist. of Abingdon Twp. v. Schempp*, 374 U.S. 203, 299 (1963) (Brennan, J., concurring) (observing that "hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion").

The Department does not currently fund any program that provides chaplaincy-type services to persons who would not otherwise be able to exercise their religious liberties due to their confinement, such as in prisons or controlled medical facilities. Therefore, the Department's grantees and sub-grantees may not provide chaplaincy services to the beneficiaries they serve as part of their grant services.

Preserving Faith-Based Organizations' Religious Identity

While faith-based organizations need to ensure that programs directly supported by the government comply with the requirement that these programs are religiously neutral, various protections also exist to ensure that faith-based organizations do not have to change their religious identities after receiving a Federal award. Religious entities may receive Federal financial assistance to support social service programs "without impairing their independence, autonomy, expression outside the programs in question, or religious character." E.O. 13279, §2(g), 67FR 77141 (*Dec.16, 2002*), as amended by *E.O.13559*, § 1(b), 75 FR 71319,7.1320 (Nov. 17, 2010). Accordingly, a faith-based organization that applies for, or participates in, a discretionary grant program of the Department or a subgrant under the Twenty-First Century Community Learning Centers program (TCCLC) may continue to carry out its mission in this way, including the definition, development, practice, and expression of its religious beliefs. *See id.* At the same time, as explained below, it may not use direct Federal financial assistance to support or engage in any explicitly religious activities and those activities must be both separate in time or location from the Federally-funded program and voluntary for beneficiaries. *See, also*, §§75.52(d), 75.714, 76.52(d) and 76.714.

A faith-based organization may also use its facilities to provide Federally-financed social services without removing or altering religious art, icons, scriptures, or other symbols from the facility.

Additionally, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its mission statements and other chartering or governing documents. Faith-based organizations that provide social services retain these rights while observing the separation requirements described further below. See §§75.52(d) and 76.52(d).

Separation of Explicitly Religious Activities

Section 2(f) of Executive Order 13279, as amended by Executive Order 13559, provides that explicitly religious activities must be separated from programs supported with direct financial assistance from the Federal government:

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

E.O. 13279, § 2(f), as amended by E.O. 13559, § 1(b), 75 FR at 71320.

In addition to the worship and religious services that faith-based organizations conduct separately from their Federally-supported project, faith-based organizations may also carry out separate social service programs with explicitly religious activities or content after receiving a Federal award. In some cases, an organization may elect to carry out a separate social service program that is explicitly religious that is similar to the government-funded project. For example, a church may carry out two mentoring programs, one of which is privately-funded and overtly religious, while the other is Federally-supported directly and free of explicitly religious content. But where such religious activities or programs are undertaken, it is especially important for it to be clear that they are separate and distinct and that participation in the religious activities is voluntary for participants in the Federal program. See 2 CFR 3474.15(d)(1), 34 CFR 75.52(c)(1), and 76.52(c)(1).

As recommended by the Advisory Council, the following guidance outlines ways to ensure that an explicitly religious program and a program funded by direct Federal financial assistance are separate and distinct.

Separate and Distinct Programs

Recipients of Federal financial assistance must ensure that any program that involves explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) 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 E.O. 13279, § 2(f), as amended by E.O. 13559, § 1(b), 75 FR at 71320.

Some of the ways in which this may be accomplished include, but are not limited to, the following examples:

- creating separate and distinct names for the programs;
- creating distinct appearances for the materials used to promote each program;
- establishing separate registrations for the programs; and
- promoting only the Federally-supported program in materials, websites or commercials purchased with any portion of direct Federal financial assistance.

Websites with explicitly religious content may include a link to the page promoting the Federally-supported program; the page about the Federally supported program may be supported with direct Federal financial assistance, but the explicitly religious page may not. The Federally supported page may link to pages with explicitly religious content; however, such links should be accompanied by statements noting that the linked content is separate from the Federally supported program, privately funded, and purely voluntary for beneficiaries.

Separate Presentations

Recipients of Federal financial assistance must implement measures to separate the presentation of any program with religious content from the presentation of the Federally supported program by time or location in such a way that it is clear that the two programs are separate and distinct. When separating the two programs by time but presenting them in the same location, the service provider must ensure that one program completely ends before the other program begins.

Some of the ways in which separation of presentations may be accomplished include the following examples:

- The programs are held in completely different sites or on different days.
- If the programs are held at the same site at completely different times, the service provider may separate programs through such means as:
 - having sufficient time between the two programs to vacate the room, turn down the lights, leave the stage, etc., in order to conclude the first program before beginning the second; and
 - completely dismissing the participants of the earlier program.
- If the programs are held in different locations at the same site at the same time, the service provider may separate programs through such means as:
 - completely separating registration locations; and
 - completely separating areas where programs are held such as by room, hallway, or floor.

Note: If an organization offer's a Federally-supported program and a privately funded religious program and both provide the same social service, it is especially important that the organization accentuate the separation between the programs. Furthermore, because the law recognizes that children are particularly susceptible to coercion, if the clients served are children, it is particularly important that the separation between the programs be made clear and the organization obtains consent from the parents before permitting the children to participate in any program that includes religious content.

Explicitly Religious and Anti-Religious Activities

Recipients of Federal financial assistance must ensure that there are no explicitly religious or anti-religious activities in a program supported by direct Federal financial assistance.

See E.O. 13279, § 2(g), *as amended by* E.O. 13559, § 1(b), 75 FR at 71320. These include:

- registration procedures that include religious inquiries or references; and
- program activities that include religious outreach or promotion, endorsement, or favoring of religious beliefs, or activities that are intended to dissuade program participants from holding religious beliefs.

Cost Allocation

Recipients of Federal financial assistance must be able to demonstrate that direct Federal financial assistance is being used only for the Federally-supported program. Some of the ways in which separation of funds may be accomplished include the following examples:

- Implement the use of time sheets that keep track of all staff hours charged to the Federally-supported program, whether the staff work in other programs or not.
- Require that staff working in both Federally-supported programs and other programs indicate clearly how many hours are spent on each program.
- Require that any staff working on both a Federally-supported program and a non-Federally-supported program, at the same site and on the same day, clearly indicate both the number of hours spent on the Federally-supported program and the actual time during which they worked on that program. The hours should reflect that time spent on any program with explicitly religious activity has been completely separated from hours during which time was spent on the Federally-supported program.
- Show cost allocations for all items and activities that involve both Federally-supported and non-Federally supported programs, such as staff time, equipment, or other expenses, such as travel to event sites. This may be accomplished through such means as the following:
 - Example: If staff in the Federally-supported program travel to a site where the organization conducts both a Federally-supported program and a privately-funded religious program, then only one half of the travel costs (e.g., gas, lodging, and other related expenses) may be charged to the Federal program. If the award recipient conducts three separate and distinct programs at one site, and one of the programs is Federally-supported, then only one third of the travel costs may be charged to the Federal program.
 - Example: If an electronic device is used 30% of the time for the Federally-supported program, this use should be documented through clear record keeping. Only 30% of the cost of the electronic device may be charged to the Federally-supported program.

See 2 CFR 200.430 (Cost Principles-Compensation-Personal Services).

Eligibility, Outreach, and Recruitment

Recipients of Federal financial assistance must ensure that the Federally-supported program is open to all qualified beneficiaries, regardless of their religious beliefs or practice. *See* E.O. 13279, § 2(d), *as amended by* E.O. 13559, § 1(b), 75 FR at 71320. *See, also,* 2 CFR 3474.15(f) and 34 CFR 75.52(e), and 76.52(e). Federal award recipients may not establish selection criteria that have the effect of discriminating against beneficiaries based on religion or non-religion. Accordingly, Federally-funded programs may not limit outreach, recruitment efforts, or advertising of the Federal program services exclusively to religious or non-religious target populations.

Availability of Separate Religious Programs

After the federally-supported program has ended, a staff person may provide a brief and non-coercive invitation to program participants to attend a separate religious program. The demarcation between the Federally-supported program and the religious program must at all times be clear. The invitation must emphasize that the religious program is a separate program from, and not a continuation of, or complementary to, the Federally-supported program. It also must be clear that participants are not required to attend the separate religious program, and that participation in Federally-supported programs is not contingent on participation in other programs sponsored by the organization. If the beneficiaries are children, then Federally supported programs should obtain parental consent before inviting the children to separate religious activities in order to ensure that the invitation is non-coercive and that participation is voluntary.