

More Than Rules

How Equal Treatment Can Expand Services to America's Needy

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Overview

Part I

Four Common Myths About the FBC Initiative

What are “Faith-Based” and “Community” Organizations?

Why Is The Faith-Based and Community Initiative Needed?

Federal Efforts to Remove Barriers & “Level the Playing Field”



Overview

Part II

Equal Treatment Regulations: Core Principles

- *Constitutional Use of Federal Assistance*
- *Equal Opportunity for All Organizations*
- *Respect for the Rights of Faith-Based Organizations*
- *Respect for the Religious Liberty of Beneficiaries*



Myths v. Reality

MYTH: “The Faith-Based and Community Initiative is about government favoring faith-based groups when awarding federal funds.”

REALITY: *By law, government is required to be neutral with respect to religion*

The Initiative removes barriers to FBCO participation in federal programs, and ensures a “level playing field” for all groups and persons, religious or secular



Myths v. Reality

MYTH:

“The Constitution strictly prohibits the government from providing funding to or partnering with any faith-based group.”

REALITY:

The Supreme Court has “consistent[ly] reject[ed] ... the argument that ‘any program which in some manner aids an institution with a religious affiliation’ automatically violates the Establishment Clause”

Mueller v. Allen (1983) [citing cases as far back as 1899]; See also Mitchell v. Helms (2000)



Myths v. Reality

Key Questions:

- (1) How is federal assistance being provided to the FBCO?
- (2) What is the *actual use* to which the funding is being put?



Myths v. Reality

MYTH:

“Faith-based groups that receive government assistance must hide their religious identity; limit their religious activities; restrict governing board membership; and remove religious signs, symbols, and art from their facilities”

REALITY:

FBOs can partner with government and still retain their religious identities.



Myths v. Reality

*Discrimination against faith-based groups
(and others) is prohibited by:*

- Executive Order 13279, guaranteeing equal treatment for faith-based groups.
- Federal Regulations at 8 Federal Agencies (DOL, DOJ, HHS, HUD, DOEd, USDA, VA, USAID)
- Various federal “Charitable Choice” statutes (e.g., 42 U.S.C. 290kk-1(d)(2)(B), relating to programs governed by SAMHSA)



Myths v. Reality

MYTH:

“Faith-based recipients of federal support are more deserving of government scrutiny than secular recipients”

REALITY:

The Federal Government practices neutrality.



Myths v. Reality

Neutrality requires that:

- Faith-based and community organizations have the *same opportunity* to apply for and administer grants and be held to the *same levels of scrutiny* as other applicants
- Religious identity should not single FBCOs out for greater oversight or monitoring
- Regardless of identity, new recipients of federal funds may need additional training to comply with federal requirements



What are “Faith-Based” and “Community” Organizations?

FBCOs include religious and non-religious non-profit groups that:

- Identify themselves with (1) community objectives; and (2) religious or nonreligious traditions or philosophies
- Vary greatly in size and resources
- Operate in communities ranging from the most urban to the most rural, serving both domestically and internationally
- Provide social services



What do “Faith-Based” and “Community” Organizations Provide?

- Unique access to underprivileged communities, high-need individuals, and community leaders
- Close cultural connections to local communities
- Dedicated volunteers
- Deep personal commitment to the individuals being served
- Services that effectively complement federal programs
- Individualized, supportive services



Why is the Initiative Necessary?

Internal audits found that federal agencies frequently:

- **Assumed faith-based groups could not partner with government because of their religious identity**
- **Excluded faith-based groups, but not secular ones, from certain programs**
- **Conditioned receiving assistance on an FBO's willingness to accept restrictions on its religious identity and activities that were not legally mandated**



Why is the Initiative Necessary?

Barriers for FBCOs included:

Federal Agencies

- Favored prior grantees
- Were unaware of FBCO services and capabilities
- Limited outreach to non-traditional partners
- Required unnecessarily complex applications and reporting

Small or novice FBCOs

- Lacked information and experience



Federal Responses to Barriers

Leveling the Playing Field

Equal treatment regulations at eight federal agencies (DOL, DOJ, HHS, HUD, DOEd, USDA, VA, USAID) are designed to:

- **Ensure equal treatment of and religious liberty for organizations providing services with federal financial assistance**
- **Clarify proper, Constitutional uses of federal assistance**
- **Protect the religious liberty of beneficiaries**



Federal Responses to Barriers

Leveling the Playing Field

Federal agencies are implementing:

- **Policy and program changes to expand public/nonprofit/private partnerships**
- **Outreach and technical assistance**
- **Innovative partnership strategies**



Federal Responses to Barriers

Leveling the Playing Field

The Centers and Task Force work within their respective departments or agencies to:

- **Expand ways in which FBCOs can partner with government to meet people's needs**
- **Ensure the equal treatment of FBCOs in the administration and distribution of federal financial assistance**



Federal Responses to Barriers

Leveling the Playing Field

The Centers and Task Force work within their respective departments or agencies to (con't):

- **Protect the religious liberty of (1) FBCOs that partner with the federal government and (2) beneficiaries of federally-supported social service programs**
- **Equip federal agencies and other entities to work more effectively with FBCOs**



Federal Responses to Barriers

Precursor: Charitable Choice

- **Applies to TANF, WtW, CSBG, and SAMHSA;**
- **Prohibits discrimination for or against faith-based groups;**
- **Prohibits government from excluding faith-based providers from competing on an equal basis**
- **Obligates government to protect the religious character and independence of grantees**



Federal Responses to Barriers

Precursor: Charitable Choice

- **Protects the religious liberty of beneficiaries by expanding their service options;**
- **Requires alternatives if anyone objects to a faith-based program (regardless of whether funding is direct or indirect);**
- **Preserves Title VII religious hiring liberty.**



Federal Responses to Barriers

Leveling the Playing Field

True or False:

The Equal Treatment Regulations apply to:

- Federal, state, and local officials that distribute or administer federal assistance? ***True***
- Non-profit, for-profit, or public organizations that receive, distribute, or administer federal assistance? ***True***
- Federal discretionary, formula, and block grants? ***True***



Federal Responses to Barriers

Leveling the Playing Field

True or False:

The Equal Treatment Regulations apply to:

- State funds commingled with federal assistance? ***True***
- State, local, or private funds that are required as a match for federal assistance? ***True***
- Cooperative agreements (federal contracts for services)? ***True***



Federal Responses to Barriers

Leveling the Playing Field

*When are the Equal Treatment Regulations **inapplicable**?*

- **When a program is covered by existing Charitable Choice Provisions**
- **When social services are provided by one of the covered government entities in-house**



Part II:

Core Principles of the Equal Treatment Regulations

- 1. Constitutional Use of Federal Assistance*
- 2. Equal Opportunity for All Organizations*
- 3. Respect for the Rights of Faith-Based Organizations*
- 4. Respect for the Religious Liberty of Beneficiaries*



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

- *“Direct” federal assistance* includes most kinds of federal assistance provided to an organization *unless* the funding satisfies the tests for being “indirect” assistance (see next slide)

- *“Direct” federal assistance* can be:
 - **Contracts**
 - **Grants**
 - **Sub-Awards**
 - **Cooperative Agreements**
 - **Loans**
 - **Formula and Block Grants**



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

- *“Indirect” federal assistance* means the beneficiary:
 - Is given genuine, independent choices
 - Freely chooses where to use the aid
- *What are examples of “Indirect” federal assistance?*
 - Vouchers
 - Certificates
 - Coupons

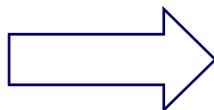
To promote genuine and independent choice, program descriptions should briefly identify any religious elements



Core Principles of Equal Treatment: *Constitutional Uses of Federal Assistance*

Direct vs. Indirect Federal Assistance

Direct:



FBCO

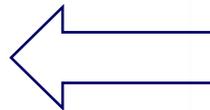
SERVICE



Indirect:



CHOICE



SERVICE

FBCO



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

*How do you know if the use of federal assistance is **proper** and **Constitutional**?*

Direct funds cannot be used for “inherently religious activities” such as:

Prayer, Worship, Religious Instruction, or Evangelization

When are such activities permissible, if ever ?:

- **Privately funded**
- **Separate in time or location**
- **Voluntary**



Core Principles of Equal Treatment: *Constitutional Uses of Federal Assistance*

If the federal assistance is *indirect*, then inherently religious activities may be:

- Incorporated into a program
- Made mandatory for program participants
- Unless a program statute contains a prohibition on doing so



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

- “Direct” federal assistance cannot be used for inherently religious activities. Which of the following activities would this include?

- A. Worship
- B. Religious Instruction
- C. Prayer
- D. Proselytizing

➔ E. All of the above

- If a FBO receives “direct” federal assistance, when are inherently religious activities permissible?

- A. Never
- B. When privately funded
- C. When separate in time or location from a federally-supported program
- D. When voluntary for program beneficiaries

➔ E. B, C, and D



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

- Under which kind of funding scenario could a FBO incorporate religious activities into a federally-supported program and require beneficiaries to participate in those religious activities (*unless a program statute contains a prohibition on doing so*)?
 - Direct
 - ➔ • Indirect
 - Both
- True or False? A FBCO can use “**direct**” federal assistance to purchase religious or scriptural materials (e.g., Bible, Torah, Koran, Talmud) or other materials intended for inherently religious activities.
 - A. True
 - ➔ B. False



Core Principles of Equal Treatment:

Constitutional Uses of Federal Assistance

- ✓ Train your staff on the principles of Constitutional uses of federal assistance
- ✓ Provide information about rights and responsibilities when administering both “direct” and “indirect” federal assistance
- ✓ Include language in all funding notices, grants, and contracts explaining the Constitutional uses of federal assistance
- ✓ Ensure that checklists and monitoring guides for desk and field reviews ask about the Constitutional uses of federal assistance, religious freedom, and other activities
- ✓ Incorporate vouchers and other “indirect” funding mechanisms into programs



Core Principles of Equal Treatment:

Equal Opportunity for All Organizations

- Federal and state mechanisms must be *neutral* with respect to religion
- Eligible organizations may not be denied the opportunity to compete for federal assistance, nor be discriminated for or against, on the basis of religious character or affiliation
- There must not be any quotas or set-asides for faith-based groups or assumptions of effectiveness or ineffectiveness
- Faith-based providers must not be excluded from federally-supported programs simply because they are perceived as “too religious” or “pervasively sectarian”
- Organizations must be judged by what they can do, not who they are



Core Principles of Equal Treatment:

Equal Opportunity for All Organizations

- Equal treatment regulations prohibit discrimination for or against an organization on the basis of religious character, affiliation, or lack thereof. This applies to which level of government?
 - A. State (if mixed with federal assistance)
 - B. Local (if mixed with federal assistance)
 - C. Federal
 - D. All of the above

- Which of the following assumptions is false?
 - A. The effectiveness of FBOs is based on results, not on their identity as FBOs
 - ➔ B. “Faith-saturated” FBOs are ineligible to apply for federal assistance
 - ➔ C. FBOs are eligible to apply for federal assistance on the basis that they are generally more effective at providing services
 - D. All of the above



Core Principles of Equal Treatment:

Ways to Ensure Equal Opportunity for All Organizations

- ✓ **Train your staff on the principles of equal opportunity and treatment for all organizations**
- ✓ **Review grant, contracting, and other procurement procedures to identify and remove unnecessary barriers**
- ✓ **Make competitive funding opportunities easily accessible to the public and broadly advertised to all potential providers**
- ✓ **Revise, clarify, and advertise competitive funding announcements, regulations, and compliance forms governing federally-supported programs**
- ✓ **Ensure that eligibility requirements are clear and affirm the principles of equal treatment**



Core Principles of Equal Treatment: *Ways to Ensure Equal Opportunity for All Organizations*

- ✓ **Rotate members of peer review panels more frequently**
- ✓ **Avoid defining “community organizations” to exclude faith-based organizations**
- ✓ **Increase the competitiveness of funding opportunities by removing any special advantages given to incumbent organizations**
- ✓ **Provide technical assistance to small or novice non-traditional providers**
- ✓ **Take steps to foster social service partnerships with all types of civic, charitable, faith-based, and community organizations**



Core Principles of Equal Treatment:

Respect for the Rights of Faith-Based Organizations

Faith-based organizations that receive federal assistance may:

- Carry out their religious activities and display religious signs or symbols inside and outside their facilities
- Use religion as a basis to select their board members and govern themselves on a religious basis
- Offer *voluntary* religious activities to program beneficiaries

Keep in mind that no “direct” federal assistance can be used for religious activities, which must be separate in time or location from federally-supported activities, voluntary for program beneficiaries, and privately funded.



Core Principles of Equal Treatment:

Respect for the Rights of Faith-Based Organizations

Title VII of the Civil Rights Act of 1964:

- Ensures that FBOs have the freedom to base employment decisions on religion, *unless a program statute contains a prohibition on doing so*
- Generally applies to FBOs that receive or administer federal assistance, *except under certain program statutes*



Core Principles of Equal Treatment: *Respect for the Rights of Faith-Based Organizations*

DOJ formula statutes do not retain Title VII religious staffing exemption:

- **Omnibus Crime Control and Safe Streets Act**
- **Juvenile Justice and Delinquency Prevention Act**
- **Victims of Crime Act**

Review the statutes and assurances of all formula and block grant programs administered by your agency.



Core Principles of Equal Treatment: ***Respect for the Rights of Faith-Based Organizations***

The Religious Freedom Restoration Act (RFRA) may apply if an FBO can show its free exercise of religion is “substantially burdened”

Faith-based and community organizations may make employment decisions based on factors not prohibited by federal, state, or local statutes



Core Principles of Equal Treatment:

Respect for the Rights of Faith-Based Organizations

- If not specifically required by a federal statute, states ***cannot*** impose 501(c)(3) status as a condition of eligibility for government funding

Proving non-profit status:

- **Local non-profit affiliate of a state or national non-profit; or**
- **Tax-exempt status letter from the IRS; or**
- **Appropriate state agency verification; or**
- **Articles or charter of incorporation filed with state**



Core Principles of Equal Treatment:

Respect for the Rights of Faith-Based Organizations

- True or False? A FBO that receives federal assistance must discontinue their religious activities, limit board membership to non-clergy, change their religious name, and remove or cover religious art or symbols.
A.True
➡ B.False
- True or False? A FBO that receives federal assistance may base employment decisions on religion, unless a program statute contains a prohibition on doing so.
➡ A.True
B.False



Core Principles of Equal Treatment:

Respect for the Rights of Faith-Based Organizations

- ✓ Train your staff, including program monitors, on respecting the rights of faith-based organizations
- ✓ Include language in all funding notices, grants, and contracts that explains the rights of faith-based organizations
- ✓ Ensure that checklists and monitoring guides for desk and field reviews ask about respecting the rights of faith-based organizations, religious freedom, and other activities



Core Principles of Equal Treatment: ***Respect for the Rights of Faith-Based Organizations***

- ✓ Ensure that federally-supported programs respect the rights of faith-based organizations, in keeping with the equal treatment regulations
- ✓ Provide information to faith-based organizations that receive or administer federal assistance (and state or local funds commingled with federal assistance) on their rights, as well as to other groups that may partner with faith-based organizations



Core Principles of Equal Treatment:

Respect for the Religious Liberty of Beneficiaries

Prospective or current program beneficiaries (clients):

1. Must be provided with *reasonable accommodation* for their religious beliefs in federally-supported programs (“*reasonableness*” is determined on a case-by-case-basis, based on the particular circumstances involved)



Core Principles of Equal Treatment: *Respect for the Religious Liberty of Beneficiaries*

Prospective or current program beneficiaries (clients):

2. Must be informed that (1) participation in inherently religious activities is voluntary and (2) their choice whether or not to participate will not affect the quality of the service they receive
3. May freely choose to participate in religious activities (see rules for “direct” and “indirect” assistance)



Core Principles of Equal Treatment:

Respect for the Religious Liberty of Beneficiaries

- What should a program employee do if asked about his/her personal faith while providing a federally-supported service?

A. Give a detailed account of his/her religious faith

B. Don't respond

➔ C. Give a short answer and offer to talk to the participant outside the context of the federally-supported program

- True or False? An organization that receives federal assistance may discriminate against a potential or current program participant because of their religion, religious beliefs, or lack thereof.

A.True

➔ B.False



Core Principles of Equal Treatment:

Respect for the Religious Liberty of Beneficiaries

- ✓ Train your staff, including program monitors, on respecting the religious liberty of beneficiaries
- ✓ Include language in all funding notices, grants, and contracts that explains the religious liberty of beneficiaries
- ✓ Ensure that federally-supported programs respect the religious rights of beneficiaries
- ✓ Ensure that checklists and monitoring guides for desk and field reviews ask about respecting the religious liberty of beneficiaries
- ✓ Provide information to individuals that receive federally-supported assistance about their religious rights



Federal Resources & Contact Information

White House Office of Faith-Based and Community Initiatives

www.whitehouse.gov/government/fbci/index.html

Federal Regulatory Changes (all agencies)

www.whitehouse.gov/government/fbci/regulatory-changes.html