ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-FYSB-IM-07-01	**2. Issuance Date:** February 20, 2007
	3. Originating Office: Family and Youth Services Bureau	
	4. Key Words: ACF, Community-Based Abstinence Education, Religious Activities, Separate Funding	

INFORMATION MEMORANDUM

TO: The Administration for Children and Families (ACF) Community-Based Abstinence Education Grantees

SUBJECT: Guidance for ACF Community-Based Abstinence Education Grantees that Implement Separate Religious Programming

REFERENCES: 45 CFR 87.1; "Participation in Department of Health and Human Services Programs by Religious Organizations; Providing for Equal Treatment of All Department of Health and Human Services Program Participants; Final rule," 69 Federal Register (FR) 136 (July 16, 2004), pp. 42586, 42593); the Office of Management and Budget (OMB) Circular A-122, Attachment A. Section A.4.a.(2).

PURPOSE: This is to inform ACF Community-Based Abstinence Education grantees that implement both Federally funded abstinence education programs and a separate, privately funded, religiously based abstinence education program of important strategies for assuring that the programs are separated by time or location as required by 45 Code of Federal Regulations (CFR) Part 87.

INFORMATION: **Religious Materials**

Eliminate all religious materials from the presentation of the Federally funded program. This includes:

- Bibles or other books of worship;
- Registration materials that include religious inquiries or references;
- Follow-up activities that include or lead to religious outreach; and
- Religious content in materials.

45 CFR 87.1(c). ("If an organization conducts [inherently religious] activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department . . . .") 69 FR 136 pp. 42586, 42593.

Separate and Distinct Programs

Any program with religious content must be a separate and distinct program from the Federally funded program, and the distinction must be completely clear to the consumer. 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 separate and distinct looks for the promotional materials used to promote each program; and
- Promoting *only* the Federally funded program in materials, websites or commercials purchased with *any portion* of the Federal funds.

Note: If an organization offers both a Federally funded program and a religious program that both provide the same social service, or the clients served are children, it is very important that the separation between the programs be accentuated.

45 CFR 87.1(c). ("Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department.") 69 FR 136, pp. 42586, 42593.

Separate Presentations

Completely separate the presentation of any program with religious content from the presentation of the Federally funded program by time or location *in such a way that it is clear that the two programs are separate and distinct.* If separating the two programs by time but presenting them in the same location, one program must *completely* end before the other program begins.

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

- **The programs are held in completely different sites or on completely different days.**

- **The programs are held at the same site at completely different times.** Separation may be accomplished through such means as:

  - Have sufficient time between the two programs to vacate the room, turn down the lights, leave the stage, etc. in order to reasonably conclude the first program before beginning the second;
  - Completely dismiss the participants of the first program; and
  - The second program could follow in the same room or, where feasible, in a different room to further distinguish the difference between the programs.

- **The programs are held in different locations of the same site <u>at the same time</u>.** Separation may be accomplished through such means as:

  - Completely separate registration locations; and
  - Completely separate areas where programs are held such as by room, hallway, or floor, etc.

45 CFR 87.1(c). ("If an organization conducts [inherently religious] activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department . . . .") 69 FR 136, pp. 42586, 42593.

<u>Availability of Other Programs</u>

After the Federally funded program has ended a grantee may provide a brief and non-coercive invitation to attend a separate religious program.

The invitation should make it very clear that this is a separate program from, and not a continuation of, the Federally funded program. It must also be clear that participants are not required to attend the separate religious program, and that participation in Federally funded programs are not contingent on participation in other programs sponsored by the grantee organization.

Religious materials, such as a registration that includes religious follow-up may only be provided in the privately funded program rather than the Federally funded program.

45 CFR 87.1(c). (". . . participation [in any privately funded inherently religious activities] must be voluntary for beneficiaries of the programs or services funded with [direct Federal financial] assistance.") 69 FR 136, pp. 42586, 42593.

Cost Allocation

Demonstrate that Federal funds are only being used for the Federally funded program. Some of the ways in which separation of funds may be accomplished include, but are not limited to, the following examples:

- Implement the use of time sheets that keep track of all staff hours charged to the Federally funded grant, whether the staff work in other programs or not.
- Require any staff working in both Federally funded programs and other programs to clearly indicate how many hours are spent on each program.
- If any staff work on both a Federally funded program and a non-Federally funded program at the same site on the same day, require the staff to clearly indicate not only how many hours are spent on the Federal program but also which specific hours are spent on the Federal program. The hours should reflect that time spent on any program with religious content have been completely separated from hours spent on the Federally funded program.
- Show cost allocations for all items and activities that involve both programs such as staff time, equipment or other expenses such as travel to event sites. This may be accomplished through such means as:

    - If transportation is used to go to a site where a Federally funded program is conducted and a religious or non-religious program funded through other means is also conducted by the grantee at the same site, one half of the travel costs (gas, lodging, etc.) should be charged to the Federal program. If *three* separate and distinct programs are conducted at a site by a Federally funded grantee and one of them is the Federally funded program, only one third of the travel costs should be charged to the Federal program.
    - If an electronic device is used 30 percent of the time for the Federally funded program, this should be demonstrated through clear record keeping. Only 30 percent of the cost of the electronic device should be charged to the program.

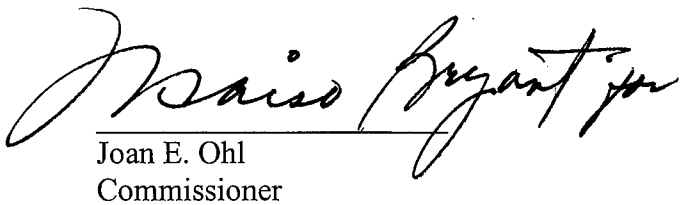
OMB Circular A-122, Attachment A. Section A.4.a(2); 45 C.F.R. 87.1.

Advertisements

Federally funded programs cannot limit advertising the grant program services exclusively to religious target populations.

45 CFR 87.1(e). ("An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.") 69 FR 136, pp. 42586, 42593.

INQUIRIES TO: Harry Wilson, Associate Commissioner, Family and Youth Services Bureau



Joan E. Ohl
Commissioner
Administration on Children,
Youth and Families

Attachments: 45 CFR 87.1;
OMB Circular A-122, Attachment A. § A.4.a.(2).

Dated: June 17, 2004.

Archibald C. Reid, III,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–16195 Filed 7–15–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 74, 87, 92, and 96

RIN 0991–AB34

Participation in Department of Health and Human Services Programs by Religious Organizations; Providing for Equal Treatment of All Department of Health and Human Services Program Participants

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: On March 9, 2004, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) to implement executive branch policy that, within the framework of constitutional church-state guidelines, religiously affiliated (or "faith-based") organizations should be able to compete on an equal footing with other organizations for the Department's funding without impairing the religious character of such organizations. It creates a new regulation on Equal Treatment for Faith-Based Organizations, and revises Department regulations to remove barriers to the participation of faith-based organizations in Department programs and to ensure that these programs are implemented in a manner consistent with applicable statutes and the requirements of the Constitution, including the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment. The Secretary requested comments on the NPRM and gave 60 days for individuals to submit their written comments to the Department. The Secretary has considered the comments received during the open comment period and is issuing the final regulation in light of those comments.

EFFECTIVE DATE: This rule is effective August 16, 2004.

FOR FURTHER INFORMATION CONTACT: Bobby Polito, Director, Department of Health and Human Services Center for Faith-Based and Community Initiatives, 200 Independence Ave., Room 120F, Washington, DC 20201, telephone (202) 358–3595.

SUPPLEMENTARY INFORMATION: On March 9, 2004, HHS published a Notice of Proposed Rulemaking (NPRM) to implement executive branch policy (69 FR 10951). We provided a 60-day comment period that ended on May 10, 2004. We offered the public the opportunity to submit comments by surface mail, E-mail, or electronically via our Web site.

Background

This final rule is part of the Department's effort to fulfill its responsibilities under two Executive Orders issued by President Bush. The first of these Orders, Executive Order 13198 of January 29, 2001, published in the **Federal Register** on January 31, 2001 (66 FR 8497), created Centers for Faith-Based and Community Initiatives in five cabinet departments—Housing and Urban Development, Health and Human Services, Education, Labor, and Justice—and directed these Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the equal participation of faith-based and community organizations in the provision of social services by their Departments. The second of these Executive Orders, Executive Order 13279 of December 12, 2002, published in the **Federal Register** on December 16, 2002 (67 FR 77141), charged executive branch agencies to give equal treatment to faith-based and community groups that apply for funds to meet social needs in America's communities. President Bush thereby called for an end to discrimination against faith-based organizations and ordered implementation of these policies throughout the executive branch in a manner consistent with the First Amendment to the United States Constitution. He further directed that faith-based organizations be allowed to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government funded programs. The Administration believes that there should be an equal opportunity for all organizations—both religious and nonreligious—to participate as partners in Federal programs.

Summary Description of Regulatory Provisions

The following is a summary of the regulatory provisions included in this final rule which creates a new Part 87 Equal Treatment for Faith-based Organizations, and revises the Department's uniform administrative requirements at 45 CFR Parts 74, 92, and 96 to incorporate the requirements of Part 87. The final rule is applicable only to those grants, agreements, and other financial assistance covered by such requirements.

The rule has the following specific objectives:

(1) *Participation by faith-based organizations in Department of Health and Human Services programs.* The rule provides that organizations are eligible to participate in Department programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for Department grant funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as other organizations. The Department, as well as State and local governments administering funds under Department programs or intermediate organizations with the same duties as a governmental entity under this part, are prohibited from discriminating for or against organizations on the basis of religious character or affiliation in the selection of service providers. Nothing in the rule, however, precludes those administering Department-funded programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

(2) *Inherently religious activities.* The rule describes the requirements that are applicable to all recipient organizations regarding the use of Department grant funds for inherently religious activities. Specifically, a participating organization may not use direct financial assistance from the Department, as well as from State and local governments or intermediate organizations administering funds under Department programs, to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, it must offer them separately, in time or location, from the programs or services funded with direct Department assistance, and participation must be voluntary for the beneficiaries of the Department-funded programs or services. This requirement ensures that direct financial assistance from the Department to participating organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct worship services, prayer

§ 96.18 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

■ 8. Add Part 87 to read as follows:

PART 87—EQUAL TREATMENT FOR FAITH–BASED ORGANIZATIONS

Sec.
87.1 Discretionary grants
87.2 Formula and block grants

Authority: 5 U.S.C. 301.

§ 87.1 Discretionary grants.

(a) This section is not applicable to the programs governed by the Charitable Choice regulations found at 42 CFR Part 54a.

(b) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any State or local government and other intermediate organizations receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by discretionary grants under which recipients are selected through a competitive process. As used in this section, the term "recipient" means an organization receiving financial assistance from an HHS awarding agency to carry out a project or program and includes the term "grantee" as used in 45 CFR Parts 74, 92, and 96.

(c) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(d) A religious organization that participates in the Department-funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the Department without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of Department-funded activities.

(e) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives direct or indirect financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, recipients should consult with the appropriate Department program office if they have questions about the scope of any applicable requirement.

(h) In general, the Department does not require that a recipient, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (h)(1) through (3) of this section if that

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. Allocable costs.

a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. Applicable credits.

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec. __.24 of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."