

Civil Rights Training for Recipients of Federal Financial Assistance – Faith-Based Organizations

Office for Civil Rights, Office of Justice Programs
April 24, 2024



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Agenda

1

Introduction to the Office for Civil Rights (OCR)

2

Protected Characteristics and Discrimination

3

Religious Non-Discrimination and FBO Obligations

4

OCR Enforcement Mechanisms and Resources



Learning Objectives

1

What are the civil rights obligations of recipients of federal financial assistance and what **programs and activities** are subject to those requirements?

2

What is the nondiscrimination provision of the **Victims of Crime Act**?

3

What are the **federal protections and requirements** of faith-based and other social service organizations under 28 C.F.R. pt. 38?

4

How does the **Office for Civil Rights** enforce federal civil rights laws?



Who We Are

The **Office for Civil Rights (OCR)** provides **technical assistance** to grantees and ensures that **recipients of financial assistance** from the Office of Justice Programs (OJP), the Office of Community Oriented Policing Services (COPS) and the **Office on Violence Against Women (OVW)** comply with federal laws that **prohibit discrimination** in employment and the delivery of services or benefits.



Center for Faith-Based and Neighborhood Partnerships

The **Center for Faith-Based and Neighborhood Partnerships** (Center) connects federal agencies with faith-based and other neighborhood organizations to facilitate partnerships and to impact specific challenges facing American communities.



Center for Faith-Based and Neighborhood Partnerships (cont.)

The Director of the Center ensures that faith-based and other non-profit organizations are aware of **opportunities to apply for federal funding** and that such opportunities are **open** to these groups, as appropriate. The Director also ensures that **information and expertise** are exchanged with these groups through non-financial partnerships emphasizing **best practices and community relationships**.



Race, Color and National Origin*

- Title VI of the Civil Rights Act
- Violence Against Women Act
- Safe Streets Act
- Juvenile Justice and Delinquency Prevention Act
- **Victims of Crime Act**

Sex

- Title IX of the Education Amendments
- Violence Against Women Act
- Safe Streets Act
- Juvenile Justice and Delinquency Prevention Act
- **Victims of Crime Act**

Sexual Orientation and Gender Identity

- Title IX of the Education Amendments
- Violence Against Women Act
- Safe Streets Act
- Juvenile Justice and Delinquency Prevention Act
- **Victims of Crime Act**

Disability

- Section 504 of Rehabilitation Act
- Title II of the Americans with Disabilities Act
- Violence Against Women Act
- **Victims of Crime Act**

Age

- Age Discrimination Act

Religion

- Violence Against Women Act
- Safe Streets Act
- Juvenile Justice and Delinquency Prevention Act
- 28 C.F.R. pt. 38
- **Victims of Crime Act**

*





When an agency receives federal financial assistance, whether directly or through an intermediary, the agency must comply with applicable federal civil rights laws.



What activities are subject to non-discrimination requirements?

- Any **“PROGRAM OR ACTIVITY”** that receives financial assistance from the DOJ.
- **“Program or Activity”** generally means **all** of the operations of an organization receiving DOJ financial assistance, and not just the specific DOJ-funded projects.



What does it mean to discriminate?

“The term ‘discriminate’ mean[s] ‘[t]o make a difference in treatment or favor (of one as compared with others).’ *Bostock v. Clayton Cnty. Ga.*, 140 S.Ct. 1731 (2020). **No malice is required.**



What does it mean to discriminate? (cont.)

- **An organization receiving DOJ financial assistance cannot deny services or create barriers to access services because of a person's protected characteristics.**
- **An organization receiving DOJ financial assistance cannot fire, refuse to hire, refuse to promote, pay different rates, or change the terms and conditions of employment because of a person's protected characteristics.**
- **Severe or pervasive harassment is discrimination whether the harassment is based on sex, race, or any other protected characteristic.**

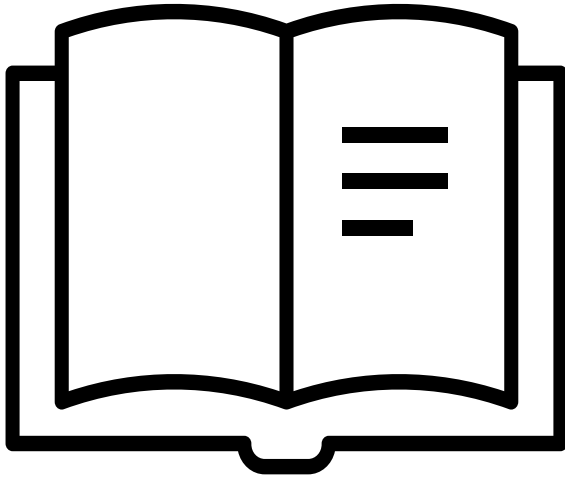


Victims of Crime Act of 1984 (VOCA)

No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this subchapter.” (34 U.S.C. 20110(e)).



Religion: Definitions



- **All aspects of religious practice as well as belief (42 USC § 2000e(j))**
- **Includes sincerely held moral or ethical beliefs (29 CFR § 1605.1)**



Faith-Based Organizations (FBOs)

- **Government agencies must remove barriers for FBOs applying for aid.**
- **Government agencies providing financial assistance cannot discriminate either in favor of, or against FBOs.**



28 C.F.R. pt. 38

- DOJ regulations on *Partnerships with Faith-Based and Other Neighborhood Organizations*.
- Most recently revised April 3, 2024.



Protections for FBOs

- **The DOJ and any state or local government receiving DOJ financial assistance shall not, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof.**
- **The DOJ may make an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.**



Use of Federal Funds

Recipients of direct federal financial assistance from the DOJ may not use DOJ funding to engage in **explicitly religious activities**, including activities that involve overt religious content such as worship, religious instruction, or proselytization.



Use of Federal Funds (cont.)

Explicitly religious activities must be:

- **separate** in time **or** location from federally-funded activities, and
- **voluntary** for those participating in the federally-funded activities.



Autonomy of FBOs

A FBO receiving DOJ financial assistance may continue to carry out its mission, including the practice and expression of its religious beliefs, as long as it does not use direct DOJ financial assistance to fund any explicitly religious activities.



Non-Discrimination

Recipients of DOJ financial assistance may not, in providing **services supported with DOJ financial assistance**, or in their **outreach activities** related to such services, discriminate against **beneficiaries** or **prospective beneficiaries** based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice.



Notice of Civil Rights Protections

An organization providing social services supported by DOJ financial assistance must give **written notice** to beneficiaries and prospective beneficiaries of the following:

- The organization may not discriminate on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice;
- The organization may not require beneficiaries to participate in any explicitly religious activities, and any participation in such activities is voluntary;



Notice of Civil Rights Protections (cont.)

- **The organization must separate in time or location any privately-funded explicitly religious activities from activities supported by direct federal financial assistance; and**
- **A beneficiary or prospective beneficiary may report an organization's denial of these protections by contacting or filing a written complaint with the OCR.**

The written notice must be provided prior to the provision of services if practicable. A sample written notice is at Appendix C to 28 C.F.R. Part 38.



Scenarios

Scenario 1: An organization requires an atheist participant in a domestic violence survivors support group funded with DOJ financial assistance to participate in an opening prayer session before the group begins.

Is this acceptable?



Scenarios

Answer: No

A FBO cannot require a beneficiary of a DOJ-funded activity to participate in privately-funded explicitly religious activities such as prayer. Participation must be strictly voluntary.



Scenarios

Scenario 2: A woman seeking services at a local nonprofit shelter for human trafficking survivors funded with DOJ financial assistance is told not to use her prayer rug in her room while she is a resident of the shelter.

Is this acceptable?



Scenarios

Answer: No

This constitutes a denial of an individual's exercise of religion and access to items of the individual's religious faith, without an apparent legal justification.



Scenarios

Scenario 3: An organization receiving DOJ financial assistance for its transitional housing program requires all beneficiaries to participate in a substance abuse recovery group, and the only offering is Alcoholics Anonymous (AA), a twelve-step recovery program.

Is this acceptable?



Scenarios

Answer: No

Federal case law holds that twelve-step recovery programs such as AA are religious activities. Accordingly, organizations receiving DOJ financial assistance cannot require beneficiaries to participate in twelve-step recovery programs.



Employment Considerations

DOJ-funded FBOs do **not** forfeit Title VII's exemption from religious discrimination in employment. Some DOJ programs, however, contain independent statutory provisions prohibiting grantees from discriminating in employment on the basis of religion; the DOJ shall determine the scope of any applicable requirements. 28 CFR 38.5(e).



Certification of Hiring Practices

DOJ has determined that on a case-by-case basis, the Religious Freedom Restoration Act may allow grantee FBOs to hire based on religion. See <https://www.ojp.gov/funding/explore/legaloverview2023/civilrightsrequirements#5>.



Certification of Hiring Practices (cont.)

A FBO must certify:

- **It will offer all federally-funded services to all qualified beneficiaries;**
- **Explicitly religious activities will be voluntary and kept separate from federally-funded activities; and**
- **It is a religious organization that sincerely believes that abandoning its religious hiring practice in order to receive federal funding would substantially burden its religious exercise.**



OCR's Civil Rights Enforcement



Additional Resources

OCR Trainings:

www.ojp.gov/program/civil-rights-office/training-resources

Guidance for FBOs, including the Certification Form Regarding Hiring Practices Based on Religion:

<https://www.ojp.gov/program/civil-rights-office/partnerships-faith-based-and-other-neighborhood-organizations>

FAQ on 12-Step Programs:

<https://www.ojp.gov/program/civil-rights-office/initiatives-interest#0-0>



Key Take Aways

1

Recipients of DOJ financial assistance must comply with applicable federal civil rights laws, including laws that prohibit discrimination based on religion.

2

Government agencies cannot discriminate either in favor of, or against FBOs.

3

Recipients must not discriminate against individuals based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice in their federally-funded services or associated outreach activities.

4

Religious activities must take place at a different time or location from federally-funded activities and must be voluntary for those participating in federally-funded activities.





Questions or Concerns:

OCR

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