

# Promoting Equal Treatment:

*A Guide For State & Local  
Compliance with  
Federal Regulations*

# Why Equal Treatment?

---

President Bush came into office vowing to launch a  
*“determined attack on need” with the help of America’s  
“armies of compassion”*

***BUT***

a Federal audit confirmed that the Federal government:

- *Was often suspicious of faith-based organizations (FBOs);*
  - *Excluded FBOs altogether from certain Federal programs;*
  - *Often conditioned funding on an FBO’s willingness to accept excessive restrictions on its religious activities; and*
  - *Showed an institutional bias for prior grantees*
- 

# Precursor: Charitable Choice

- ✓ Applies to TANF, WtW, CSBG, and SAMHSA;
  - ✓ Prohibits government from excluding faith-based providers from competing on an equal basis for government funds based on faith;
  - ✓ Prohibits discrimination for or against faith-based groups;
  - ✓ Obligates government to protect the religious character and independence of groups that receive government funds;
  - ✓ Protects the religious liberty of beneficiaries by expanding their service options and requiring alternatives if anyone objects to a faith-based program (regardless of whether funding is direct or indirect);
  - ✓ Prohibits direct funding of inherently religious activities like worship, religious instruction, or proselytization;
  - ✓ Prohibits discrimination against beneficiaries on the basis of religion; and
  - ✓ Preserves Title VII religious hiring liberty.
- 

# The Level Playing Field

---

## **Federal, State & Local Neutrality**

- No discrimination for or against a provider based on religious character, affiliation, or lack thereof

## **Faith-based providers eligible on the same basis as other organizations**

- No quotas or set-asides
- No automatic assumption of effectiveness

## **The “Pervasively Sectarian” standard is no more**

- No exclusion of faith-based providers simply because they are perceived as “too religious”

## **“What can you do?” *NOT* “Who are you?”**

- Focus on effectiveness and results
- 

# Applicability

---

## *Who is bound by the Equal Treatment Regulations?*

- Federal officials
- State officials
- Local officials
- Intermediary organizations

## *When are they bound?*

Whenever they engage in the purchase of social services from nongovernmental organizations with Federal or related State or local funds

# Applicability

---

## *What types of funds are covered?*

- Discretionary grant funds
  - Formula grant funds
  - Block grants funds
  - Required matching funds, regardless of whether commingled with Federal funds
  - State, local or private supplemental funds when voluntarily commingled with Federal funds
- 

# Applicability

---

## *Equal Treatment does not apply:*

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



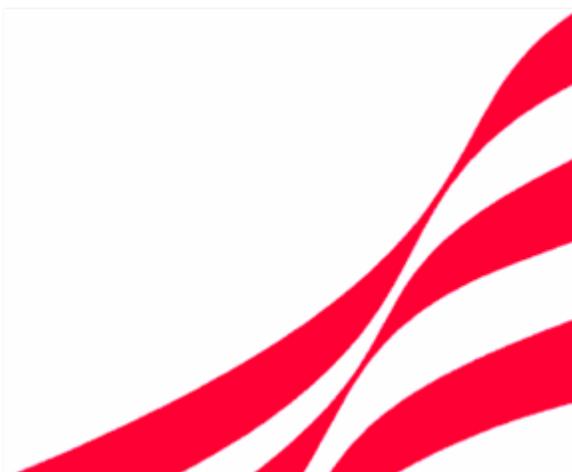
# Covered Financial Relationships

---

## ***DIRECT FUNDING***

- Contracts
- Grants
- Subcontracts
- Subgrants
- Cooperative Agreements

## ***INDIRECT FUNDING***

- Vouchers
  - Certificates
  - Coupons
- 

# Provider Obligations

---

*No direct funds for “inherently religious activities” like Prayer, Worship, Religious Instruction, or Evangelization*

***BUT***

*Such activities are permissible if:*

- *Privately-funded*
- *Separate in time or location from gov't program*
- *Voluntary for program beneficiaries*

***AND***

***Fiscal & Programmatic Accountability for Grantees***

- *All providers bound by same accounting standards*
  - *Compliance with program requirements a must*
- 

# Rights of Faith-Based Providers

---

## ➤ *Religious Independence*

- ✓ Independent from Federal, State & local government
- ✓ *NO* conditioning funds on forfeiting religious identity
- ✓ *NO* exclusion of FBOs because they are motivated by faith to provide social services
- ✓ Faith-based providers may:
  - Retain their religious names and mission statements
  - Choose board members on a religious basis
  - Retain control over internal governance
  - Maintain religious art, icons, or scriptures in their facilities while providing government-funded programs

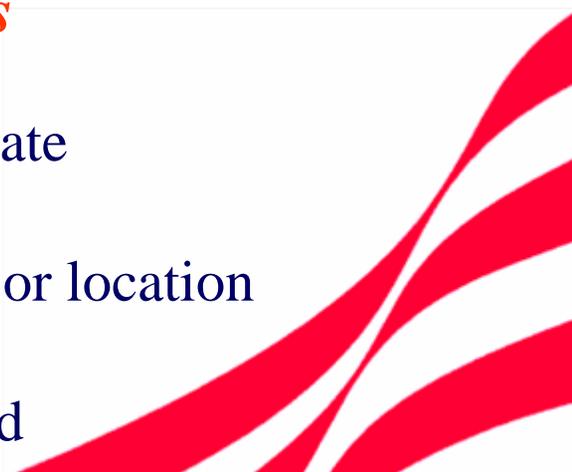
# Rights of Faith-Based Providers

---

## ➤ *Title VII Staffing Freedom*

- Part of the Civil Rights Act of 1964
- Unanimously upheld by the Supreme Court in 1987
- Generally applies even where FBOs receive government funds *unless* a program statute provides otherwise
- RFRA applicable if FBO is ‘substantially burdened’

## ➤ *Inherently Religious Activities Okay in Programs Funded by Indirect Funds*

- Product of genuine and independent private beneficiary choice
  - No private funding or separation in time or location required
  - Beneficiary participation may be required
- 

# Rights of Faith-Based Providers

---

## ➤ *501(c)(3) Tax Status*

- Many Federal programs do require providers to be nonprofits ***HOWEVER***
  - If not specifically required by a Federal program statute, States cannot impose 501(c)(3) status as a condition of eligibility for government funding
  - Various ways to prove nonprofit status
    - 501(c)(3) recognition; ***or***
    - Appropriate State agency verification; ***or***
    - Certified legal document showing status; ***or***
    - Local nonprofit affiliate of a State or national nonprofit
- 

# Protections for Beneficiaries

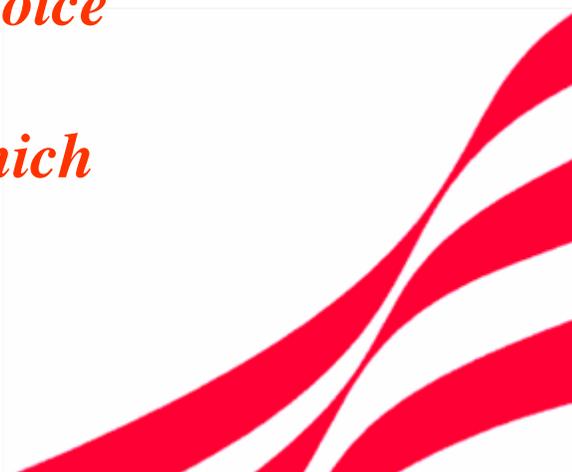
---

- *Where direct funds are concerned . . .*
  - *No discrimination based on religion, religious belief or lack thereof*
  - *No mandatory participation in inherently religious activities*

**VOLUNTARINESS IS KEY**

- *Where indirect funds are concerned . . .*
  - *Genuine and independent private choice*
  - *From among multiple providers*
  - *Including at least one provider to which beneficiary has no objection*

**CHOICE IS KEY**



# State & Local Compliance

---

## *Compliance with the Equal Treatment Is NOT Demonstrated SIMPLY By . . .*

- Contracting with religiously affiliated providers such as Lutheran Social Services or Catholic Charities under terms that do not fully respect those organizations' religious characters and missions
  - Allowing churches, synagogues, and mosques to accept federally funded certificates to provide child care
  - Welcoming faith-based organizations to apply for government funds, but not changing overly-restrictive eligibility requirements
  - Allowing congregations to provide volunteer mentors, but not allowing church-related programs to compete for social service funding
  - Allowing faith-based organizations to compete for grants and contracts, but not instituting required protections for the religious liberty of providers or beneficiaries
- 

# State & Local Compliance

---

## *Affirmative Steps You Can Take to Ensure Compliance*

- Educate staff on the principles of equal treatment
  - Undertake a formal review of grant and procurement policies at various State and Local agencies
  - Revise and clarify announcements, regulations, and compliance forms governing social service programs
  - Rotate members of peer reviewer panels more frequently
  - Avoid defining “community organizations” so as to exclude faith-based organizations
  - Base application point-preferences on results, not repeat grantee status
  - Provide technical assistance to novice and non-bureaucratic providers
  - Consider ways to incorporate vouchers and other indirect funding mechanisms into programs for greater flexibility
  - Take steps to foster relationships with all types of civic, charitable, faith-based, and community organizations
- 