

EQUAL TREATMENT REGULATIONS AT THE U.S.
DEPARTMENT OF EDUCATION: LEVELING THE
PLAYING FIELD

Equal Treatment For Faith-Based Providers

- The final regulations (“Regulations”) 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 funding by the U.S. Department of Education (“ED”). (Regulations found at <http://www.ed.gov/policy/fund/reg/fbc-reg.html>.)
- Faith-based organizations are also eligible to contract with grantees and subgrantees of ED funds, including States, on the same basis as any other private organizations, with respect to contracts for which such other organizations are eligible.
- Ensuring Equal Treatment at the State and Local Level. Much progress has been made at ED to ensure equal treatment of all applicants; however, the majority of ED funded social services are administered by state and local governments. ED must ensure that state and local agencies comply with the Regulations.

Preservation Of Religious Liberties And Character Of Faith-Based Providers

- A faith-based organization that applies for or receives a grant under a program of ED may retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization may, among other things: (i) retain religious terms in its name; (ii) continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs; (iii) use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities; (iv) select its board members and otherwise govern itself on a religious basis; and (v) include religious references in its mission statement and other chartering or governing documents.
- Protecting the Religious Hiring Rights of Faith-Based Charities. For over 30 years, Title VII of the Civil Rights Act has protected the right of faith-based organizations to make employment decisions based on religion. This protection is not forfeited when these organizations receive financial assistance from ED.

Protection For Program Beneficiaries

- A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a grant from ED, and participation in any such inherently religious activities by beneficiaries of the programs supported by the grant must be voluntary.

[Please also review a guidance document for faith-based and community organizations on partnering with the federal government and a religious hiring rights booklet that are available respectively at http://www.whitehouse.gov/government/fbc/guidance_document.pdf and <http://www.whitehouse.gov/government/fbc/booklet.pdf>.]