



**Civil Rights & Diversity
Issuance System**



CRD – 010

Date: June 17, 2020

Office: Office of Civil Rights and Diversity (OCR/D)

Subject: Executive Order 13798, Promoting Free Speech and Religious Liberty, in Department of the Treasury Financial Assistance Programs

1. **PURPOSE.** This Issuance establishes the Department of the Treasury’s policy under Executive Order (EO) 13798, Promoting Free Speech and Religious Liberty, in Treasury’s programs administering federal financial assistance.
2. **SCOPE.** This Issuance applies to all bureaus, offices, and organizations in the Department of the Treasury, with the exception of the Offices of Inspector General. The provisions of this Issuance shall not be construed to interfere with or impede the authorities or independence of the Offices of Inspector General.
3. **BACKGROUND.**
 - a. On May 4, 2017, the President signed Executive Order (EO) 13798 “Promoting Free Speech and Religious Liberty.” This EO established a policy of promoting religious liberty and directed the Attorney General to provide guidance to federal agencies on the requirements of laws protecting religious liberty.
 - b. On October 6, 2017, the U.S. Attorney General issued a memorandum reminding agencies that religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Generally, such organizations are not required to alter their religious character to participate in a government program, cease engaging in explicitly religious activities outside the program, or effectively relinquish their federal statutory protections for religious hiring decisions.¹

¹ Attorney General’s memorandum at 6; *see also id.* at 8 (providing guidance for “Agencies Engaged in Contracting and Distribution of Grants”).

- c. On January 16, 2020, the Office of Budget and Management (OMB) issued guidance under memorandum (M-20-09) mandating agencies that administer a federal grant program to publish policies detailing how they will administer federal grants in compliance with EO 13798, the Attorney General's memorandum, and OMB's Memorandum and advising that States or other public grantees may not condition sub-awards of federal grant money in a manner that would disadvantage applicants of sub-grants based on their religious character.
 - d. 2 C.F.R. § 200.300 requires grant awarding agencies "to ensure that Federal funding is expended...in full accordance with U.S. statutory and public policy requirements: including...those...prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements...and incorporate them either directly or by reference in the terms of conditions of the Federal award." The Financial Assistance General Certifications and Representations completed by all recipients of federal awards that register and apply for grants through the System for Award Management require awardees to certify that they will comply with all relevant provisions of federal laws, executive orders, regulations, and public policies governing financial assistance awards.
4. **EFFECTIVE DATE.** This policy is effective with date of signature.
 5. **POLICY.** It is the policy of the Department to comply with all nondiscrimination requirements applicable to federal financial assistance programs, including EO 13798 to ensure religious organizations compete on equal footing for federal financial assistance used to support Treasury programs.
 6. **DEFINITIONS.** The following terms are defined to provide clarification for the purpose of this Issuance.
 - a. **Federal financial assistance** is a term used to describe monetary or nonmonetary assistance to a recipient to support a public purpose. It includes, but is not limited to, grants and loans of federal funds; grants or donations of federal property; details of federal personnel; or any agreement, arrangement, or other contract that has as one of its purposes the provision of assistance. For instance, Treasury and its bureaus provide federal financial assistance by issuing grants; donating surplus computer equipment to schools and police departments; providing community development funds to institutions serving distressed communities and low-income individuals; and by providing grants to organizations to fund low-income taxpayer clinics.
 - b. **Recipient (of federal financial assistance)** is a term used to describe any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom federal financial assistance is extended, directly or

through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

- c. Sub-Recipient (of federal financial assistance) means a non-federal entity that receives a sub-award from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

6. **RESPONSIBILITIES.**

- a. The OCRD Director has the delegated authority to establish agency civil rights policies including the Departmental policy for applying Executive Order 13798 in the Treasury financial assistance programs or activities.
- b. The Bureau heads and the Departmental Offices program offices are responsible for ensuring religious organizations are given the opportunity to compete for Treasury grants or contracts and participate on an equal basis with nonreligious organizations. In accordance with the Attorney General's guidance, absent unusual circumstances, bureaus and program offices should not condition receipt of a contract or grant on the effective relinquishment of a religious organization's exemption for religious hiring practices, or any constitutional or statutory protection for religious organizations under Section 702 of the Title VII of Civil Rights Act, 42 U.S.C. 2000e-1(a). In addition, bureaus and program offices shall ensure that the terms of the grants they award include provisions that state other public grantees may not condition sub-awards of Treasury grant money in a manner that would disadvantage grant applicants based on their religious character, as required by OMB Memorandum M-20-09.

7. **AUTHORITIES.**

- a. Treasury Directive 12-41, "Delegation of Authority Concerning Equal Employment Opportunity (EEO) Programs."
- b. Treasury Order 102-02, "Delegation of Authority Concerning Equal Opportunity Programs."

8. **REFERENCES.**

- a. Executive Order 13798, Promoting Free Speech and Religious Liberty
- b. 2 C.F.R. § 200.300
- c. 28 C.F.R. § 42.102
- d. Attorney General's October 6, 2017 Memorandum, Implementation of Federal Law Protections for Religious Liberty
- e. OMB January 16, 2020 Memorandum, M-20-09, Guidance Regarding Federal Grants and Executive Order 13798

9. **OFFICE OF PRIMARY INTEREST.** Office of the Assistant Secretary for Management and Office of Civil Rights and Diversity.

10. **POLICY REVIEW.** The applicable provision or provisions shall be amended or superseded effective on the dates specified in any statutory or regulatory change, and OCRD shall issue interim guidance addressing the change as soon as practicable. This Issuance will be reviewed after five years.

Mariam G. Harvey
Director
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