

Chapter 22:

**Youth
Faith-Based and Neighborhood Partnerships**

Issue Date:

Effective Date:

July 6, 2005

Updated: June 1, 2011

Required Action

Action: To provide WSAs with USDOL Equal Treatment Regulations and Updated Federal Contact Information on the Administration's Center for Faith-Based and Neighborhood Partnerships (CFBNP).

Who: All WSAs and youth service providers in the State of Minnesota.

Background: The USDOL equal treatment regulations apply to all providers who implement DOL-supported social service programs including for-profit and non-profit organizations, faith-based and community-based organizations, state and local governments, one-stop systems, Job Corps Centers and contractors. USDOL equal treatment regulations apply equally to DOL support, state funds combined with Federal funds and funds the state is required to contribute under a matching or grant agreement. DOL/ETA issued Training and Employment Notice 42-10 (dated May 20, 2011), providing updated contact information for the Administration's Center for Faith-Based and Neighborhood Partnerships (CFBNP). The CFBNP was established in April 2010. The purpose of the CFBNP is to form collaborations among all levels of government and non-profit organizations – faith-based and secular -- and community leaders to more effectively serve Americans in need. CFBNP has developed a Community of Practice on the Workforce3One.org website called the Partnerships CoP (<http://partnerships.workforce3one.org>).

Policies and Procedures:

The Department of Labor released new regulations regarding the treatment of religious organizations in regard to contractual and program policies (see 20 Code of Federal Regulations (CFR) Parts 667 and 670 and 29 CFR Parts 2 and 37) and the Federal Register dated July 12, 2004 and Training and Employment Guidance Letter 1-05 dated July 6, 2005.

1. Equal Participation of Faith-Based Organizations

A faith-based organization must be eligible, on the same basis as any other organization, to apply for or receive Federal financial assistance and participate in any DOL social service program.

Faith-based organizations, like any organization receiving DOL financial assistance, must not use direct DOL financial assistance to support inherently religious activities such as worship, religious instruction and proselytization.

Faith-based organizations receiving DOL financial assistance retain their independence from Federal, State, and local governments and may continue to carry out their mission and maintain their religious character. This autonomy includes (but may not be limited to):

- The right to use the organization’s facility to provide DOL-supported social services without removing or altering religious art, icons, scripture or other religious symbols
- The right to self-govern and to select board members on the basis of religion; and,
- The right to express freely their views, including religious views.

2. DOL Support for Job Training and Employment in Religious Activities Permitted When Assistance is Indirect

Included among the provisions in the Interim Final Ruling is a regulation barring the use of WIA Title I financial assistance to employ or train participants in performing religious activities. Recent Supreme Court decisions, however, permit the use of federal financial assistance to support employment and training in religious activities when the assistance is “indirect”.

WIA participants to be employed or trained in religious activities when “indirect” WIA financial assistance is used are governed by Subpart D in 29 CFR part 2. Under this new Subpart, assistance is “indirect” when a participant is offered a genuine and independent choice among training providers or program options and can freely elect, from among such options, a provider or option that incorporates religion. Any indirectly-assisted training or employment services offered must also satisfy the legal and other requirements of the program under which it is offered.

Services may be offered to participants by means of a voucher, coupon, credit card or certificate or similar mechanism that permits individuals to choose among providers or program options. Under the regulation, the assistance program must include a mechanism that allows the participant the means to make a genuine and independent private choice of a provider or program option.

To ensure genuine and independent private choice, each participant must be offered at least one option to which the participant has no religious objection. Administrators are reminded, however that training services, whether under ITA’s or under contract, must be provided in a manner that maximizes informed consumer choice. An organization must not be favored or denied recognition as an eligible training provider solely on account of religion.

Individual Training Accounts and Personal Employment Accounts qualify as indirect assistance. ITA and PRA accounts are neutral with regard to religion for a WIA participant who wants to use financial assistance to support employment and training in religious activities.

Other WIA activities may also qualify as “indirect” assistance. These activities include (but are not limited to):

- On the job training (OJT)
- Incumbent worker training
- Customized training
- Core services
- Intensive services
- Support services

Programs offering such activities are required to operate in a manner designed to provide the participant with a genuine and independent choice among providers or program options.

3. What is “Direct” Support?

- Defined in 29 CFR 2.31(g) as “Federal financial assistance, as well as procurement funding, provided to a non-Federal organization to support the organization’s administration of or participation in a USDOL social service program.”
- Includes grants, contracts, cooperative agreements, and other arrangements.
- Includes monetary and non-monetary assistance (e.g., in-kind contributions, frequent use of Federally-supported property. etc.)

4. What is “Indirect” Support?

To know how religion can be involved in services provided with Federal support, the first question is whether the Federal support is “indirect”.

Federal support is considered “indirect” when:

- Beneficiaries are given genuine, independent choices about where to direct the aid, including having at least one option to which the beneficiary has no religious objection.
- Beneficiaries freely choose where to direct the aid.

So long as the tests for “indirect” support are satisfied, the following mechanisms can be considered “indirect” support:

- Individual Training Accounts (ITAs)
- Personal Reemployment Accounts (PRAs)

Federal support is considered “direct” unless it satisfies the tests for “indirect” support.

5. What is “Direct” Support?

Some examples of “direct” Federal support include:

- Grants
- Sub-awards
- Contracts
- Cooperative agreements

6. When FBCOs receive “direct” support, the following rules apply:

- “Direct” support must not be used for inherently religious activities.
- Organizations may still engage in inherently religious activities, but these activities must be kept separate in time or location from Federally-supported services.
- All inherently religious activities must be voluntary for program participants and beneficiaries.

7. When FBCOs receive “indirect” support, the following rules apply:

1. Inherently religious activities can be made an integrated part of the regular training program. Participation by the customer in these religious activities is considered voluntary because it is the customer who has freely chosen to participate in the training program.
2. As a result, customers can be required to participate fully in the training program, including any inherently religious activities.

8. Equal Opportunity for All Organizations

In the administration of USDOL social service programs:

- No organization may be discriminated for or against on the basis of religious character or affiliation.
- No eligible organization may be denied the opportunity to compete for or receive USDOL and other Federal financial assistance based upon the organization’s religious character or affiliation.
- Federal, State, or other mechanisms through which Federal support is provided to organizations (for example, a mechanism giving out vouchers for job training) must, by law, be neutral with respect to religion.
- Example: The entity selecting organizations to be placed on a list of eligible training providers under WIA must neither favor nor disfavor an organization based on religion.

9. Appropriate Use of Federal Support

There are different rules that apply to how FBCOs may use “direct” and “indirect” support. State and local areas develop standards and procedures by which organizations may qualify as Eligible Training Providers (ETPs). FBCOs that apply and that meet all requirements are placed on the ETP list.

Eligible Training Providers that receive “indirect” USDOL support through an Individual Training Account (ITA), Personal Reemployment Account (PRA), or similar mechanism may:

- Make inherently religious activities an integrated part of their regular training program.
- Require customers to participate fully in their program, including any inherently religious activities.

Among the provisions of Section 188 of WIA that apply to all recipients (including FBCOs) is a prohibition on employment decisions based on religion for positions that administer, or are connected with, programs and activities that receive WIA financial assistance.

Section 188 does not apply to employment decisions made (1) before an organization first received financial assistance under WIA, or (2) for programs and activities that do not receive WIA financial assistance.

10. Frequently Asked Questions for FBCOs and the WIA System

Q: How does an organization separate its religious activities from its Federally-supported social service program?

A: Organizations that receive “direct” support must:

- o Separate “inherently religious activities” in time or location from government-funded services.
- o Carefully account for their use of all government support, and ensure that Federal support is not used for inherently religious activities.
- o Ensure that all “inherently religious activities” are voluntary for program participants.

Q: Can people who receive Federally-supported services from a provider also participate in that organization’s religious activities?

A: Yes, provided that a few rules are followed:

- o Providers that receive “direct” Federal support must not require program participants to take part in any religious activities.
- o Employees or volunteers should reassure the participants that they can receive Federally-supported services even if they do not participate in these activities.

Q: Can employees or volunteers of a faith-based provider receiving “direct” Federal support invite program participants to join in religious services or events?

A: Yes, provided that:

- o Announcements of or invitations to religious services or events are handled in a similar fashion to announcements or invitations for non-religious events.
- o The religious activities are separate in time or location from the Federally-supported activities.
- o The employees or volunteers make clear that participation is completely voluntary and won’t affect the services the participant receives.

Q: If a program participant at an FBCO asks about the faith of an employee or volunteer, can the employee or volunteer discuss his/her faith with the participant?

A: If a participant asks a program employee/volunteer about his/her personal faith while he/she is providing a Federally-supported service, the employee/volunteer may give a short answer.

If the program participant wishes to have a longer conversation on matters of faith, the employee/volunteer should set up a time outside the context of the Federally-supported program to speak with the participant.

Q: Can an FBCO use “direct” Federal support to purchase religious materials?

A: No. Faith-based and community organizations may not use Federal support to purchase religious materials, such as the Bible, Torah, Koran, Talmud, or other religious or scriptural materials.

Federal support also cannot be used to purchase materials intended for inherently religious activities.

Q: Can a faith-based organization use “direct” Federal support to pay the salary of a member of its staff?

A: Yes, provided that this staff person is delivering the Federally-supported service and is not engaged in inherently religious activities, such as religious worship, instruction, and proselytizing, while working to provide the Federally-supported service.

The staff member may be a rabbi, priest, imam, or preacher, for example, so long as he or she does not engage in these activities while being paid with public dollars.

Q: If an FBCO receives “direct” or “indirect” Federal support, can it choose not to provide services to some people because of their religion?

A: No. If a faith-based or community group receives Federal financial assistance, whether “direct” or “indirect,” it may not discriminate, based on religion or religious belief, against a person who is eligible for the service.

Q: Are Individual Training Accounts (ITA) and Personal Reemployment Accounts (PRA) examples of “indirect” support?

A: ITAs and PRAs, like vouchers, can be considered “indirect” support so long as the tests for “indirect” support are satisfied.

Q: If a faith-based group previously allowed to hire on a religious basis becomes a recipient of WIA financial assistance, will the organization have legal problems related to its previous hiring decisions?

A: No. The law does not apply retroactively. The WIA nondiscrimination provisions will apply only to the activities in which a faith-based organization engages after it becomes a recipient under WIA, and only to jobs that administer or are connected with the programs and activities that receive the Federal financial assistance

Q: May a youth in a WIA Title IB Youth Program participate in a WIA-funded work experience at a work site where religious activities or instruction occur – for example at a Christian child care center?

A: Yes. If the youth participant has made a genuine, independent choice to participate in the work experience at that site from a number of different options. In this case, indirect funding rules apply. Under these rules, religious activities may be integrated into the training experience and the youth’s participation in such activities is considered voluntary.

Resources

Cites/References:

New Equal Treatment Regulations (29CFR Part 2, Subpart D)

Workforce Investment Act (WIA) Nondiscrimination and Programmatic Regulations (29CFR 37.6(f); 20CFR 667.266 and 667.275)

Training and Employment Guidance Letter (TEGL) No. 1-05, dated July 6, 2005

Training and Employment Notice (TEN) No. 42-10, dated May 20, 2011

White House Office of Faith-Based and Community Initiatives
www.whitehouse.gov/government/fbci/guidance

USDOL Civil Rights Center
www.dol.gov/oasam/programs/crc/crcwelcome.htm

Job Corps Policy and Requirement Handbook
<http://jobcorps.dol.gov/docs/prh.pdf>

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Youth website:

http://www.positivelyminnesota.com/All_Programs_Services/Office_of_Youth_Development

Federal Contact Information:

For updates and additional information, please visit the DOL Center for Faith-based and Neighborhood Partnerships' website at <http://www.dol.gov/cfbnp> or contact us cfbnp@dol.gov or 202/693-6017.

Community of Practice: CFBNP has developed and is managing a Community of Practice (CoP) on the Workforce3One.org web site called the Partnerships CoP (<http://partnerships.workforce3one.org>). The Partnerships CoP is designed for Job Club coordinators, volunteers, organizers, and others to share toolkits and resources, connect with other Job Clubs locally and across the country, share contact information for OneStop Career Centers with active Job Clubs, and access Webinars, discussion threads, and other resources.