



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Legal Safeguards

1. **Separate and Distinct Programs**

Any program with religious content must be a separate and distinct program from the federally funded program, and the distinction must be completely clear to the consumer. Some of the ways in which this may be accomplished include, but are not limited to, the following examples:

- Creating separate and distinct names for the programs;
- Creating separate and distinct looks for the promotional materials used to promote each program; and
- Promoting *only* the federally funded program in materials, websites, or commercials purchased with *any portion* of the federal funds.

Note: If an organization offers both a federally funded program and a religious program that both provide the same social service, or the clients served are children, it is very important that the separation between the programs be accentuated.

45 CFR 87.1 (c). ("Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department."). 69 Fed. Reg. 42586, 42593 (2004).

2. **Separate Presentations**

Completely separate the presentation of any program with religious content from the presentation of the federally funded program by time or location *in such a way that it is clear that the two programs are separate and distinct*. If separating the two programs by time but presenting them in the same location, one program must *completely* end before the other program begins.

Some of the ways in which separation of presentations may be accomplished include, but are not limited to, the following examples:

- **The programs are held in completely different sites or on completely different days.**
- **The programs are held at the same site at completely different times.** Separation may be accomplished through such means as:
 - Have sufficient time between the two programs to vacate the room, turn down the lights, leave the stage, etc. in order to reasonably conclude the first program before beginning the second;
 - Completely dismiss the participants of the first program;
 - The second program could follow in the same room or, where feasible, in a different room to further distinguish the difference between the programs.
- **The programs are held in different locations of the same site at the same time.** Separation may be accomplished through such means as:
 - Completely separate registration locations; and
 - Completely separate areas where programs are held such as by room, hallway, or floor, etc.

45 CFR 87.1. (c). ("If an organization conducts [inherently religious] activities, the activities must be offered separately, in time or location, from the programs or services

funded with direct financial assistance from the Department”). 69 Fed. Reg. 42586, 42593 (2004).

3. **Religious Materials**

Eliminate all religious materials from the presentation of the federally funded program. This includes:

- Bibles or other books of worship;
- Registration materials that include religious inquiries or references;
- Follow up activities that include or lead to religious outreach; and
- Religious content in materials.

45 CFR 87.1. (c). (“If an organization conducts [inherently religious] activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department”). 69 Fed. Reg. 42586, 42593 (2004).

4. **Cost Allocation**

Demonstrate that federal funds are only being used for the federally funded program. Some of the ways in which separation of funds may be accomplished include, but are not limited to, the following examples:

- Implement the use of time sheets that keep track of all staff hours charged to the federally funded grant, whether the staff work in other programs or not.
- Require any staff working in both federally funded programs and other programs to clearly indicate how many hours are spent on each program.
- If any staff work on both a federally funded program and a non-federally funded program at the same site on the same day, require the staff to clearly indicate not only how many hours are spent on the federal program but also which specific hours are spent on the federal program. The hours should reflect that time spent on any program with religious content have been completely separated from hours spent on the federally funded program.
- Show cost allocations for all items and activities that involve both programs such as staff time, equipment, or other expenses such as travel to event sites.

This may be accomplished through such means as:

- Example: if transportation is used to go to a site where a federally funded program is conducted and a religious or non-religious program funded through other means is also conducted by the grantee at the same site, one half of the travel costs (gas, lodging, etc.) should be charged to the federal program. If *three* separate and distinct programs are conducted at a site by a federally funded grantee and one of them is the federally funded program, only one third of the travel costs should be charged to the federal program, etc.
- Example: if an electronic device is used 30% of the time for the federally funded program, this should be demonstrated through clear record keeping. Only 30% of the cost of the electronic device should be charged to the program.

OMB Circular A-122, Attachment A. § A.4.a.(2); 45 C.F.R. 87.1.

5. **Advertisements**

Federally funded programs cannot limit advertising the grant program services exclusively to religious target populations.

45 CFR 87.1 (e). (“An organization that participates in programs funded by direct financial assistance from the department shall not, in providing services, discriminate against a program beneficiary or prospective beneficiary on the basis of religion or religious belief.”)

6. **Availability of other Programs**

After the federally funded program has ended a grantee may provide a brief and non-coercive invitation to attend a separate religious program.

The invitation should make it very clear that this is a separate program from, and not a continuation of, the federally funded program. It must also be clear that participants are not required to attend the separate religious program, and that participation in federally funded programs are not contingent on participation in other programs sponsored by the grantee organization.

Religious materials, such as a registration that includes religious follow-up may only be provided in the privately funded program rather than the federally funded program.

45 CFR 87.1 (c). (“participation [in any privately funded inherently religious activities] must be voluntary for beneficiaries of the programs or services funded with [direct federal financial] assistance”). 69 Fed. Reg. 42586, 42593 (2004).