



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

January 16, 2020

M-20-09

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought  
Acting Director

A handwritten signature in blue ink, appearing to read "R. Vought", written over the printed name of the Acting Director.

SUBJECT: Guidance Regarding Federal Grants and Executive Order 13798

This Memorandum provides guidance to all executive departments and agencies (“agencies”) on applying Executive Order (“E.O.”) 13798 in administering Federal grants.

**Background**

On May 4, 2017, the President signed E.O. 13798 “Promoting Free Speech and Religious Liberty.” Among other things, the E.O. 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. On October 6, 2017, the Attorney General issued a memorandum advising agencies on the requirements of religious liberty laws, including how those laws apply to the award of grants.

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 and 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 requires awardees to certify that they will comply with all relevant provisions of Federal laws, executive orders, regulations, and public policies governing financial assistance awards.

**Guidance**

The heads of all agencies shall review E.O. 13798 and the Attorney General’s October 6, 2017, memorandum and consult with their office of general counsel regarding these requirements and this Memorandum. Additionally, within 120 days of the date of this Memorandum, all agencies administering a Federal grant program shall publish policies detailing how they will administer Federal grants in compliance with E.O. 13798, the Attorney General’s memorandum, and this Memorandum.

The Attorney General’s memorandum reminds 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, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their Federal statutory protections for religious hiring decisions.<sup>1</sup>

In particular, rules or grant terms that penalize or “disqualif[y] a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person’s religious character” violate the Constitution’s Free Exercise Clause, unless the government can prove that such rules or terms are the least restrictive means of achieving a compelling government interest.<sup>2</sup>

Even when no *Federal* regulation or grant term penalizes or disqualifies grant applicants from participation based on their religious character, some *state* laws governing awards to sub-grantees, including state constitutions, may purport to limit sub-grantee participation in violation of the U.S. Constitution.<sup>3</sup> In attempting to comply with such state constitutions and laws, grantees may be discriminating against applicants for sub-grants on the basis of religion, in violation of the Constitution’s Free Exercise Clause and the grantee’s commitment to adhere to Federal laws prohibiting discrimination under 2 C.F.R. § 200.300. Accordingly, grant awarding agencies shall ensure that the terms of the Federal grants they award make clear that states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

Agencies have meaningful tools to address public recipients’ unlawful discrimination on the basis of religious character in the issuance of sub-awards of Federal grant funds —up to and including terminating the grant and initiating proceedings to debar the recipient from being eligible in the future to receive Federal grants, contracts, or subsidies. Agencies administering a Federal grant program shall take all appropriate action, in a manner consistent with applicable law, to ensure that public grantees do not discriminate against applicants for sub-grants on the basis of their religious character. Such action may include, but is not limited to, utilizing the risk mitigation provisions set forth in 2 C.F.R. § 200.207 and the enforcement provisions set forth in 2 C.F.R. § 200.338, as appropriate.

If you have any questions regarding this Memorandum, please contact OMB’s Office of General Counsel.

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

<sup>2</sup> *Id.* appendix at 3a (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017)).

<sup>3</sup> *See Trinity Lutheran*, 137 S. Ct. at 2022.