



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

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Frequently Asked Questions Regarding Twelve-Step Recovery Programs for Recipients of Justice Department Financial Assistance¹

Executive Order 13279, Executive Order 13559, and the Department of Justice's (DOJ) regulations on the Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, prohibit recipients from using DOJ financial assistance on inherently (or explicitly) religious activities and from discriminating in the delivery of services on the basis of religion. The following are some frequently asked questions addressing whether twelve-step recovery programs are considered inherently religious activities and the conditions under which recipients may offer such programs in compliance with applicable civil rights laws.

What are “twelve-step” recovery programs?

Traditional twelve-step programs outline a course of action for recovering from an addiction whereby participants proceed through twelve core developmental stages. Twelve-step programs are a form of self-help in which members of a fellowship struggling with the same problem support each other.

The twelve-step program originated with Alcoholics Anonymous (AA) (<http://aa.org>). According to AA, the twelve steps are as follows:

- (1) We admitted we were powerless over alcohol—that our lives had become unmanageable. (2) Came to believe that a Power greater than ourselves could restore us to sanity. (3) Made a decision to turn our will and our lives over to the care of God *as we understood Him*. (4) Made a searching and fearless moral inventory of ourselves. (5) Admitted to God, to ourselves, and to another human being the exact nature of our wrongs. (6) Were entirely ready to have God remove all these defects of character. (7) Humbly asked Him to remove our shortcomings. (8) Made a list of all persons we had harmed, and became willing to

¹ This guidance applies to recipients of financial assistance from the Department of Justice's Office of Justice Programs, Office on Violence Against Women, and Office of Community Oriented Policing Services.

make amends to them all. (9) Made direct amends to such people wherever possible, except when to do so would injure them or others. (10) Continued to take personal inventory and when we were wrong promptly admitted it. (11) Sought through prayer and meditation to improve our conscious contact with God, *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out. (12) Having had a spiritual awakening as the result of these Steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

There are other twelve-step programs that deal with addictions other than alcohol. Some of the best known are Narcotics Anonymous (NA) (<http://www.na.org>), Gamblers Anonymous (GA), Overeaters Anonymous (OA), and Clutterers Anonymous (CLA). There are also a number of twelve-step programs that address compulsive sexual behavior.

The format of twelve-step meetings may vary, but most include a discussion of one of the twelve steps, the sharing of personal stories of recovery, reading from twelve-step literature, and prayer. Twelve-step programs also include sponsorship, linking a mentor who has had success in recovery with a person who is at the beginning stages of recovery.

How do the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, affect a recipient's use of DOJ funding?

In 2002, President George W. Bush issued Executive Order 13279, and in 2004, the DOJ issued the regulations, Equal Treatment for Faith-Based Organizations (Equal Treatment Regulations), 28 C.F.R. pt. 38. In 2010, President Barack H. Obama issued Executive Order 13559 on federal funding of faith-based organizations. The Executive Orders and the Equal Treatment Regulations prohibit recipients from using DOJ financial assistance to engage in inherently (or explicitly) religious activities, such as proselytizing, scripture study, or worship. Faith-based recipients may, of course, engage in inherently religious activities; however, these activities must be separate in time or location from the program supported with DOJ financial assistance and participation in these programs must be voluntary. Recipients must not compel beneficiaries of the DOJ-funded program to participate in inherently religious activities, and they must not discriminate in the delivery of services or benefits on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice.

Is a twelve-step recovery program such as AA or NA an inherently religious activity?

Yes. Courts have analyzed this question in reference to the Establishment Clause of the First Amendment to the United States Constitution. The Establishment Clause prohibits the government from making any law “respecting an establishment of religion.” This clause not only forbids the government from establishing an official religion, but it also prohibits government actions that favor one religion over another or from preferring religion over non-religion. Courts have repeatedly found that traditional twelve-step programs contain religious content and are religious activities.² In reaching this determination, courts have relied upon several factors, such as the fact that the twelve steps are based on the monotheistic idea of a single God or Supreme Being, which is rooted in the religious concept of a Higher Power. It is important to keep in mind that a program or activity does not need to be a traditional form of religious worship to be a religious activity; a program can have a secular purpose such as providing drug or alcohol treatment but its programming may contain religious content.

Does this mean that direct and sub-recipients of DOJ financial assistance cannot include twelve-step recovery programs in any of the services that they provide?

No. Recipients must carefully structure their programs and activities, however, to ensure that DOJ financial assistance is not being used for literature, classes, meetings, counseling sessions, or other activities that support twelve-step programs. Moreover, recipients must ensure that twelve-step programs take place at a separate time or location from the activities supported with DOJ financial assistance and that the participation of beneficiaries in twelve-step programs is strictly voluntary. DOJ-funded organizations that operate substance-abuse treatment programs must make clear to both grant-making agencies and beneficiaries that twelve-step programming is separate and distinct from DOJ-funded activities. Recipients must also ensure that they do not compel beneficiaries of DOJ-funded programs to participate in twelve-step programs. They cannot penalize a beneficiary who chooses not to participate in a twelve-step program.

Can a recipient use DOJ financial assistance to purchase or develop literature or other materials that promote the twelve-step model of recovery?

No. This is a clear example of using DOJ financial assistance to engage in a religious activity.

² See the cases in the Resources section that appears at the end of this document.

If a recipient uses DOJ funds to subsidize in whole or in part the salary and benefits of one or more staff positions, how can the recipient ensure that this does not result in supporting a twelve-step recovery program?

Recipients must ensure that staff members fully funded by DOJ are not involved with twelve-step programs whereby they are instructing or indoctrinating clients on the twelve steps. For example, DOJ-funded staff members as part of their employment cannot supervise or lead twelve-step meetings or courses; they cannot counsel or treat clients based on the twelve-step model; and they cannot read to clients from literature expounding twelve-step programs.

For staff positions subsidized both with DOJ financial assistance and private funds, recipients must ensure that DOJ financial assistance is not subsidizing any portion of staff members' time spent on twelve-step programs. Staff members could clearly document the number of hours spent on secular activities associated with the DOJ-funded program to ensure that time spent on twelve-step programs is completely separate from time spent on permissible secular activities.

If rental or construction costs are allowable under the terms of a grant award, may a recipient use DOJ funds to rent, lease, construct, or renovate a facility where a twelve-step program will take place?

Yes, as long as the recipient *only* uses DOJ funds to subsidize the costs attributable to permissible secular activities occurring within the facility and uses private funds to subsidize the costs attributable to the twelve-step program. Where a recipient expends DOJ funds on the rental, lease, construction, or renovation of a facility that will be used for both secular activities permissible under the grant award and a twelve-step program, the recipient shall determine the portion of time that the facility will be used to conduct permissible secular activities and must prorate the costs of the rental, lease, construction, or renovation of the facility to ensure that the amount of DOJ funding does not exceed the portion or percentage of costs attributable to the permissible secular activities. For example, if a recipient uses a facility for permissible secular activities approximately eighty percent of the time and uses the facility for a twelve-step program approximately twenty percent of the time, the amount of DOJ funding expended on the rental, lease, construction, or renovation of the facility cannot exceed eighty percent of the total costs.

How can a recipient ensure that a twelve-step recovery program is conducted separately in time or location from DOJ-funded activities?

Twelve-step meetings, courses, or counseling sessions held in the community, outside of a recipient's facilities, are sufficiently separate in location from DOJ-funded activities so as not to raise a question about the recipient's sponsorship of the program. If a twelve-step program takes place in a recipient's facilities, it may still satisfy the requirement of being separate in location from DOJ-funded activities, if it takes place in a different room

or floor from where the DOJ-funded activities occur. Twelve-step programs may also take place in a recipient's facilities if they take place at a different time from the DOJ-funded program. For example, the twelve-step program could take place either before or after the DOJ-funded program; however, the recipient must make clear that the twelve-step program is not part of the DOJ-funded program.

Once a recipient ensures that it is not using DOJ financial assistance to support a twelve-step recovery program and the program is being held separately in time or location from DOJ-funded activities, how can a recipient ensure that participation in a twelve-step program is voluntary for beneficiaries of the DOJ-funded activities?

Recipients of DOJ financial assistance must ensure that they are not mandating beneficiaries of the DOJ-funded programs to participate in any twelve-step programming. While it is permissible to require a beneficiary to participate in substance abuse treatment, recipients cannot only offer twelve-step programs; recipients must offer at least one alternative treatment program that is secular in nature. Recipients should also be careful that they are not coercing beneficiaries to participate in twelve-step programs by making DOJ-funded services or benefits contingent upon participating in the twelve-step program, or otherwise leveraging DOJ-funded services to influence an individual's decision to participate in a twelve-step program. When assessing whether such decisions by program beneficiaries are voluntary, funding recipients should be mindful that beneficiaries of substance abuse services may be particularly susceptible to pressure or persuasion to engage in activities.

What are some examples of alternative treatment or recovery programs that are secular in nature?

In addition to one-on-one and group counseling sessions that have no religious content, some examples of secular treatment programs include SMART Recovery (<http://smartrecovery.org>), Rational Recovery (<http://rational.org/>), Secular Organizations for Sobriety/Save Our Selves (<http://cfiwest.org/sos>), and LifeRing (<http://lifering.org>). The DOJ provides this partial list of alternative programs solely as information without endorsing any program or commenting on its efficacy.

What is the responsibility of a State Administering Agency if it discovers that a recipient, subrecipient, or contractor receiving DOJ financial assistance includes a twelve-step program in its services?

If a State Administering Agency has any questions regarding whether a subrecipient's or contractor's inclusion of a twelve-step program in its services and activities complies with the Equal Treatment Regulations, the State Administering Agency may contact the Office for Civil Rights at (202) 307-0690 or via email at askOCR@ojp.usdoj.gov.

Whom should I contact if I have questions about how the Equal Treatment Regulations relate to twelve-step recovery programs conducted by a recipient of DOJ financial assistance?

The Office for Civil Rights is available to provide guidance on how the Equal Treatment Regulations relate to twelve-step recovery programs. For technical assistance, please call the Office for Civil Rights' main line at (202) 307-0690.

Resources

- *Miner v. Goord*, No. 09-0674-cv, 2009 WL 4072085 (2d Cir. Nov. 25, 2009) (holding that the twelve steps of AA are religious in nature).
- *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007) (holding that AA has substantial religious components and that compelling individuals to participate in AA violates the Establishment Clause).
- *Cox v. Miller*, 296 F.3d 89 (2d Cir. 2002) (finding that AA's activities must be treated as religious for purposes of the Establishment Clause).
- *DeStafano v. Emergency Hous. Group, Inc.*, 247 F.3d 397 (2d Cir. 2001) (finding that the AA program is a religion for Establishment Clause purposes).
- *Warner v. Orange County Dep't of Prob.*, 115 F.3d 1068 (2d Cir. 1997) (concluding that the AA program has substantial religious components and AA meetings are intensely religious events).
- *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996) (holding that the twelve-steps underlying AA programs are based on the monotheistic idea of a single God or Supreme Being, or, in other words, a religious concept of a Higher Power).
- *Care Net Pregnancy Ctr. of Windham County v. U.S. Dep't of Agric.*, No. 11-2082 (RBW), 2012 WL 4801777 (D.D.C. Oct. 10, 2012) (upholding a hearing officer's determination that a faith-based applicant for U.S. Department of Agriculture (USDA) funding would violate the USDA's regulations, Equal Opportunity for Religious Organizations, 7 C.F.R. § 16.3, where it intended to use USDA financial assistance to fund the complete acquisition cost of a facility to be used for both secular and religious activities).
- *Hazle v. Crofoot*, No. 2:08-cv-00295-GEB-KJM, 2010 WL 1407966 (E.D. Cal. Apr. 7, 2010) (concluding that a twelve-step recovery program based on the principles of AA and NA contained religious components).
- *Freedom from Religion Found., Inc. v. McCallum*, 179 F.Supp.2d 950 (W.D. Wis. 2002) (concluding that while AA is not a traditional form of religious worship the content of AA is religious in nature, and finding that an agency's ability to estimate how much time counselors spend on religious versus non-religious matters does not mean that it is possible to make a clear distinction between the two roles that counselors play).
- *Warburton v. Underwood*, 2 F.Supp.2d 306 (W.D.N.Y. 1998) (finding that the emphasis placed on God, spirituality, and faith in a Higher Power by twelve-step programs such as AA and NA supports a determination that the programs are

religious).

- Exec. Order No. 13559, 75 Fed. Reg. 71319 (Nov. 17, 2010), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2010-11-22/pdf/2010-29579.pdf>.
- Exec. Order No. 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2002-12-16/pdf/02-31831.pdf>.
- U.S. Department of Justice, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, *available at* <http://www.gpo.gov/fdsys/pkg/CFR-2000-title28-vol1/content-detail.html>.
- Substance Abuse and Mental Health Services Administration, *An Introduction to Mutual Support Groups for Alcohol and Drug Abuse*, 5 Substance Abuse in Brief Fact Sheet (Spring 2008), *available at* http://kap.samhsa.gov/products/brochures/pdfs/saib_spring08_v5i1.pdf.