

RAIN-2020-G03

EPA Implementation of Executive Order 13798 "Promoting Free Speech and Religious Liberty" and Office of Management and Budget (OMB) Memorandum M-20-09, Guidance Regarding Federal Grants and Executive Order 13798

Notification Date: May 8, 2020

Purpose: OMB Memorandum M-20-09, Guidance Regarding Federal Grants and Executive Order 13798, January 16, 2020 (OMB Memo), requires that "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...." Additionally, the OMB Memo directs agencies to ensure that states or other public recipients do not condition sub-awards in a manner that would disadvantage grant applicants based on their religious character. This Recipient/Applicant Information Notice (RAIN) implements this direction and informs recipients and applicants that EPA has revised Appendix B, National Subaward Term and Condition, of EPA's Subaward Policy (EPA Subaward Policy Appendix B) to prohibit state or other public recipients of EPA funds from conditioning subawards in a manner that would disadvantage applicants for subawards based on their religious character. Additionally, the "Civil Rights Obligations" [General Term and Condition that is included in all financial assistance awards](#) has been revised to include references to Executive Order 13798 and 2 CFR 200.300.

This RAIN also confirms that EPA has reviewed its Assistance Listings in [beta.SAM.gov](#) to verify they do not penalize or disqualify a religious person or organization from competing for financial assistance under eligible programs because of a person's religious character.

Summary: Under 2 CFR 200.300, EPA is responsible for managing its financial assistance programs in a manner that ensures that agency funds are expended in accordance with U.S. statutory and public policy requirements including those prohibiting discrimination. These requirements are to be communicated to recipients by incorporating them directly or by reference in the terms of their EPA awards. EPA has revised the "Civil Rights Obligations" General Term and Condition to specify that recipients must comply with statutory and national policy requirements, including those prohibiting discrimination and those described in E.O. 13798 promoting free speech and religious freedom under 2 CFR 200.300. EPA Subaward Policy Appendix B which is incorporated into the General Terms and Conditions for EPA awards also identifies a number of statutory and public policy requirements that apply to recipients of EPA funds and requires that pass-through entities ensure that their subrecipients comply with these requirements as well. EPA has amended EPA Subaward Policy Appendix B to reinforce prohibitions on discrimination against subrecipients by state or other public recipients based on their religious character in response to the Administration's direction in the OMB Memo.

When recipients register and apply for grants in the System for Award Management (Sam.gov), they certify compliance with all relevant provisions of Federal laws, executive orders, regulations, and public policies governing financial assistance awards. EPA takes its responsibility to ensure compliance seriously when evaluating the risks of funding an applicant under 2 CFR 200.205. As appropriate, EPA will take action under 2 CFR 200.207, *Specific Conditions*, 2 CFR 200.338, *Enforcement*, and 2 CFR Part 180, *Debarment and Suspension* in response to violations of any requirements applicable to EPA financial assistance agreements.

In addition, EPA has reviewed its Assistance Listings in beta.SAM.gov to verify that they do not penalize or disqualify a religious person or organization from competing for financial assistance under eligible programs because of a person's religious character.

Background: The President signed E.O. 13798 "Promoting Free Speech and Religious Liberty" on May 4, 2017. The E.O., among other things, 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 how religious liberty laws apply to Federal grants. The Attorney General's guidance advised 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.

The OMB Memo provides in pertinent part:

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 subgrantees, including state constitutions, may purport to limit sub-grantee participation in violation of the U.S. Constitution. 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.

The OMB Memo also provides that ". . . within 120 days of [January 16, 2020], 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." EPA's issuance of RAIN 2020-G03 complies with OMB's direction.

Related Resources:

[EPA Subaward Policy, Appendix B.](#)

[OMB Memorandum M20-09, Guidance Regarding Federal Grants and Executive Order 13798.](#)

[Executive Order 13798 "Promoting Free Speech and Religious Liberty"](#)

[Attorney General Sessions' October 6, 2017 Guidance on Federal Law Protections For Religious Liberty.](#)

[EPA General Terms and Conditions](#)