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New guidance refines the rules for faith-based/government partnerships

Patricia Zapor Catholic News Service | Aug. 19, 2013
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Since the creation under President George W. Bush of what is now known as the Office of Faith-based and Neighborhood Partnerships, the formal collaboration of government and religious institutions has steadily expanded, though not without growing pains.

A set of guidelines issued Aug. 2 by the Office of Management and Budget aims to clarify some of the areas that have, at times, appeared to be a little muddy. For example, the guidance changes the term for what kind of religious activity cannot be conducted in a government-funded program from "inherently religious" to "explicitly religious" and offers examples.

Melissa Rogers, director of the office, told Catholic News Service that where the boundaries lie between religious and government activity needed to be clearer.

"We found there was some confusion" Rogers said, about, for example, whether explicitly religious activities such as prayer or worship could have any part in programs funded with government money, and exactly where the boundaries between them need to be established.

"We found people didn't always have all the practical guidance they needed," she said.

Rogers said the guidance clarifies that just as explicitly religious activities are prohibited in federally funded projects, so too, is hostility toward religion.

For example, if, in a federally funded program intended to help people with job skills, a participant cites her religious faith as helping keep her motivated and supported, that's perfectly fine. The participant should not be discouraged from such an expression, and it certainly wouldn't disqualify her from the program, Rogers said. But neither should the government-paid employees of the program be initiating a conversation about how faith in God may help someone who's looking for work.

Put another way, government-funded employees of programs offered through faith institutions shouldn't be leading participants toward religious expression. Nor should they stand in the way if participants spontaneously raise religious influences on their lives.

The OMB guidance incorporates the March 2010 recommendations of an advisory council of faith and community leaders. The panel was asked to propose how partnerships with the government should function. That material went to an interagency working group that built upon the advisory council's proposals and issued its own recommendation in April 2012.

The OMB said individual federal agencies will need to review their rules for faith-based collaboration, using those interagency recommendations as a basis.

"For example," said the OMB memorandum, "these rules must be amended where appropriate to clarify

prohibited uses of direct federal financial assistance and to set forth matters such as additional protections for prospective and current beneficiaries, responsibilities of intermediary organizations, and the definitions of 'direct' and 'indirect' assistance."

In plainer language, Rogers said in her own blog post about the OMB directive: "This guidance will help agencies to ensure that these partnerships respect religious freedom guarantees and work effectively for faith-based and other community providers, and the people in need they serve."

Rogers' blog said the memorandum also is intended to ensure that:

- Decisions about federal grants are not made on the basis of an organization's religious affiliation or because of a lack of any religious affiliation.
- Transparency improves by online posting of regulations, documents used as guidance, and policies that have implications for faith-based and neighborhood organizations. Lists of organizations receiving federal finances should also be posted.

For some observers, such as Mark Silk, professor of Religion in Public Life at Trinity College in Hartford, Conn., one area of concern about collaboration between faith institutions and the government continues to be whether churches, mosques, temples or other religious institutions may discriminate on the basis of religion in hiring workers for federally funded programs.

In a blog post for Religion News Service, Silk observed that the Justice Department was asked to deal with questions about faith-based hiring on a case-by-case basis. He called it an "elephant in the living room" that the Obama administration has not explicitly addressed whether faith-based organizations can discriminate on religious grounds in hiring for federally funded programs.

The OMB guidance doesn't address that. Neither did the recommendations of the interagency working group, nor did the 2010 report of the advisory council, which Rogers chaired as an appointed member. She was named director of the faith-based office in March.

At the time, the advisory council did its work, it was directed to "not address the issue of religion-based employment decisions" for jobs partly or fully subsidized by the federal government.

In 2012, a White House official told CNS that organizations that engage in religion-based hiring would continue to be allowed to compete for federally funded programs.

As the former chair of the advisory council, Rogers in 2012 said she regretted that "the White House has not moved" on the subject of employment guidelines. She noted courts have upheld the right of faith organizations to employ only co-religionists in ministry, but that it's less clear where the legal line falls for federally funded faith-based groups.

Speaking with more circumspection in her new position as director of the faith-based office, Rogers was careful to say only that the office is "moving to implement the rules in the executive order" that in November 2010 set out President Barack Obama's principles for government partnerships with faith-based groups "and guidance as quickly and comprehensively as possible."

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