

Religious Liberty Guidance Backgrounder

- As President Trump said, "Faith is deeply embedded into the history of our country, the spirit of our founding and the soul of our nation * * * [and the administration] will not allow people of faith to be targeted, bullied or silenced anymore." He promised that this administration would "lead by example on religious liberty" and he is delivering on that promise.
- In his Executive Order, the President directed the Attorney General to "issue guidance interpreting religious liberty protections in Federal law" in order "to guide all agencies in complying with relevant Federal law."
- The Attorney General has issued legal guidance to all administrative agencies and executive departments about their obligations to protect religious liberty in the United States. The guidance reminds agencies of their obligations under federal law to protect religious liberty, and summarizes twenty key principles of religious-liberty protections that agencies can use in that effort.

Religious Liberty Guidance Generally

- Religious liberty is a foundational principle of enduring importance in this country, enshrined in our Constitution and other sources of federal law. In fact, we identified more than 200 statutes and more than 158 regulations that provide such protection during our review.
- President Trump recognized the importance of this right in his Executive Order Promoting Free Speech and Religious Liberty, and he declared that "[i]t shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom."¹
- The Attorney General issued two memoranda. The first memorandum, addressed to all administrative agencies and executive departments, identifies 20 key principles of religious liberty. It explains that agencies should use these principles to protect religious liberty in all aspects of their work, including as employers, rule-makers, adjudicators, contract- and grant-makers, and program administrators. The second memorandum, addressed to Department of Justice components and United States Attorney's offices, directs the implementation of that guidance within the Department.
- This Guidance does not resolve any specific cases; it offers guidance on existing protections for religious liberty in federal law. The Guidance does not authorize anyone to discriminate on the basis of race, ethnicity, national origin, sex, sexual orientation, or gender identity in violation of federal law or change existing federal and state protections.

¹ Exec. Order No. 13798 § 1, 82 Fed. Reg. 21675 (May 4, 2017).

The 20 Key Principles of Religious Liberty

1. The freedom of religion is an important, fundamental right, expressly protected by federal law.
2. The free exercise of religion includes the right to act or not to act in accordance with one's religious beliefs.
3. The freedom of religion extends to persons and organizations.
4. Americans do not give up their freedom of religion by participating in society or the economy, or interacting with government.
5. Government may not restrict or compel actions because of the belief they display.
6. Government may not exclude religious individuals or entities based on their religion.
7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.
8. Government may not officially favor or disfavor particular religious groups.
9. Government may not interfere with the autonomy of a religious organization.
10. The Religious Freedom Restoration Act of 1993 ("RFRA") prohibits the federal government from substantially burdening any aspect of religious observance or practice, except in rare cases where the government has a compelling reason and there is not a less-restrictive option available.
11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.
12. RFRA does not permit the federal government to second-guess the reasonableness of a sincerely held religious belief.
13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.
14. Under RFRA, any government action that would substantially burden religious freedom is held to an exceptionally demanding standard.
15. RFRA applies even where a religious adherent seeks an exemption from a requirement to confer benefits on third parties.

16. Title VII of the Civil Rights Act prohibits covered employers from discriminating against individuals on the basis of their religion.
17. Title VII's prohibits discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship.
18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.
19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.
20. Generally, the federal government may not condition federal grants or contracts on the religious organization altering its religious character, beliefs, or activities.

Implementation of the Guidance at the Department of Justice

- The Department of Justice will vigorously enforce federal protections for religious liberty.
- The Attorney General has directed all Department components and United States Attorney's offices to incorporate the new guidance in litigation strategy and arguments, Department operations, grant administration, and all other aspects of the Department's work.
- Department attorneys will also use this interpretive guidance in formulating opinions and advice for all other Executive Branch agencies.
- The Office of Legal Policy, in consultation with the Civil Rights Division, will review every Department rule-making action, and every agency action submitted for review by the Department, to ensure consistency with federal protections for religious liberty. The Department will not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty.