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Part VI

Department of Education

**34 CFR Parts 74, 75, 76, and 80
Direct Grant Programs; State-Administered
Programs; Administration of Grants and
Agreements With Institutions of Higher
Education, Hospitals, and Other Non-
Profit Organizations; and Uniform
Administrative Requirements for Grants
and Cooperative Agreements to State and
Local Governments; Proposed Rule**

DEPARTMENT OF EDUCATION**34 CFR Parts 74, 75, 76, and 80**

RIN 1890-AA11

Direct Grant Programs; State-Administered Programs; Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Center for Faith-Based and Community Initiatives, Office of the Secretary, U.S. Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) governing direct grant programs; State-administered programs; the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations; and the uniform administrative requirements for grants and cooperative agreements to State and local governments. The amendments are intended to clarify that faith-based organizations are eligible to participate in programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

DATES: We must receive your comments on or before December 1, 2003.

ADDRESSES: Address all comments about these proposed regulations to John J. Porter, Director, Center for Faith-Based and Community Initiatives, Office of the Secretary, U.S. Department of Education, 555 New Jersey Avenue, NW., suite 410, Washington, DC 20208-8300. You may also fax your comments to (202) 208-1689.

If you prefer to send your comments through the Internet, use the following address: faithandcommunity@ed.gov.

You must include the term "proposed rule" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: John J. Porter. Telephone: (202) 219-1741.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections and paragraph or paragraphs of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing the regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in suite 410, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Faith-based organizations make an important contribution to the education of Americans and provide an important part of the social services network of the United States. Faith-based organizations acting alone or in partnership with public schools, community-based organizations, institutions of higher education, and other private organizations do much good work to advance the quality of education for all Americans. Often this good work of faith-based organizations is done despite meager resources, and in the past, it has generally been done without the assistance of the Federal Government.

The Department seeks to facilitate the contribution of faith-based and community organizations to increase the effectiveness of its programs and to provide equal access to a quality education for all Americans. We believe this will strengthen the effort to make sure that no child is left behind.

President Bush has directed Federal agencies, including this Department, to take steps to ensure that Federal policies and programs are fully open to faith-based organizations in a manner that is consistent with the U.S. Constitution and statutory requirements. The Administration believes that faith-based organizations possess an under-appreciated ability to meet the educational needs of disadvantaged children and to strengthen our system of education. The Administration believes that Federal agencies should ensure that there is equal opportunity for all private organizations, faith-based and secular, to use Federal resources to meet the needs of their communities.

President Bush has signed two Executive orders relevant to the Department's efforts on the faith-based and community initiative. Executive Order 13198, dated January 29, 2001, directs the Department to identify and eliminate regulatory and other programmatic obstacles to the full contribution of faith-based and community groups in order to increase the effectiveness of the Department's programs. Executive Order 13279, dated December 12, 2002, directs the Department to review and evaluate existing policies that have implications for faith-based and community organizations in order to assess the consistency of those policies with certain fundamental principles and policymaking criteria designed to ensure a level playing field for religious and nonreligious organizations. The order directs the Department, to the extent permitted by law, (1) to amend all such existing policies to ensure that they are consistent with the fundamental principles and policymaking criteria; (2) where appropriate, to implement new policies that are consistent with and necessary to further the fundamental principles and policymaking criteria; and (3) to implement new policies that are necessary to ensure that the Department collects data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance. This proposed amendment to the Department's regulations is part of its effort to comply with these Executive orders.

Significant Proposed Regulations

Current Regulations. Current program eligibility regulations at 34 CFR parts 75 and 76 do not state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as other private organizations, with respect to programs for which such organizations are eligible. Similarly, current procurement regulations at 34 CFR parts 74 and 80 do not state specifically that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible.

Proposed Regulations and Reasons. Proposed §§ 75.52 (Eligibility of faith-based organizations for a grant) and 76.52 (Eligibility of faith-based organizations for a subgrant) state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

The Department seeks to clarify that the most qualified applicants will receive funding under the Department's programs, and that the religious character or affiliation of the private organizations that apply will not be taken into account. For that reason, the Department is additionally proposing the removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2), which prohibit grantees and subgrantees, respectively, from using their grants and subgrants to pay for an activity of a school or department of divinity.

In addition, to clarify that grantees may not use their grants to pay for equipment or supplies used for religious worship, instruction, or proselytization, the Department is proposing a technical amendment to § 75.532(a)(2).

Moreover, although the Department believes that grantees and subgrantees may use their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility only to the extent that such facilities are used for eligible Department-funded activities (and not for inherently religious activities such as religious worship, instruction, or proselytization, or any other ineligible purpose), the Department is proposing simply to remove §§ 75.532(a)(3) and 76.532(a)(3) because there is no

statutory authority under which a grantee or subgrantee may use its grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). Because no Department program funds capital improvements for any such facility, these regulations have no application and are unnecessary.

Lastly, the Department is proposing to add a new paragraph (f) to § 74.44 and a new paragraph (j) to § 80.36 to clarify that faith-based organizations are eligible to contract with and otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible. The proposed paragraphs state that such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the use of Department funds for inherently religious activities, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

Proposed §§ 75.52 (Eligibility of Faith-Based Organizations for a Grant) and 76.52 (Eligibility of Faith-Based Organizations for a Subgrant)

Proposed paragraph (a)—Participation by faith-based organizations in the Department's programs. This paragraph clarifies that a faith-based organization is eligible to participate in the Department's direct grant programs (proposed § 75.52) and State-administered programs (proposed § 76.52) on the same basis as any other private organization, with respect to programs for which such other organizations are eligible. If a faith-based organization meets the statutory and regulatory tests for eligibility, the Department considers it eligible. The inclusion of qualified faith-based organizations increases the pool of potential applicants and enhances competition. As a result, the inclusion of qualified faith-based organizations increases the quantity of highly qualified applicants that are eligible to receive Federal funding, contributing to an increase in effectiveness of the Department's programs, a savings of Federal dollars, the generation of new ideas, and the provision of services to people who may not otherwise receive them. The Department needs the contribution of qualified faith-based organizations that serve in areas of great

need and that have strong ties to the community to achieve the Department's goal of ensuring that no child is left behind.

Consistent with this principle, the paragraph additionally provides that the Department and the States shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

Proposed paragraph (b)—Prohibition on use of funds for inherently religious activities. This paragraph clarifies that a faith-based organization that receives a grant under a program of the Department (proposed § 75.52) or a subgrant from a State under a State-administered program of the Department (proposed § 76.52) is subject to the provisions of §§ 75.532 and 76.532, respectively. Those sections prohibit grantees (§ 75.532) and States and subgrantees (§ 76.532) from using their grants and subgrants to pay for inherently religious activities, such as religious worship, instruction, or proselytization; and for equipment or supplies used for religious worship, instruction, or proselytization. Sections 75.532 and 76.532 also currently prohibit grantees and subgrantees from using their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization; and an activity of a school or department of divinity, as so defined. As explained above, however, the Department seeks to eliminate those provisions elsewhere in these proposed regulations.

Proposed paragraph (c)—Inherently religious activities that must be offered separately in time or location and be voluntary. This paragraph clarifies that a private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by grants from the Department (proposed § 75.52) or subgrants from a State under a State-administered program of the Department (proposed § 76.52), and that participation in any such inherently religious activities by beneficiaries of the programs supported by the grants or subgrants must be voluntary.

The religious liberties of program beneficiaries must be guarded. No one should be coerced into participating in inherently religious activities to receive federally funded services. Thus, the inherently religious activities of faith-based groups must be separated by time

or location from the programs or services supported by grants from the Department or subgrants from a State under a State-administered program of the Department, and participation in such inherently religious activities by beneficiaries of the program supported by the grants or subgrants must be voluntary.

Proposed paragraph (d)—Faith-based organizations may retain their religious character. The restrictions on the use of grants and subgrants for inherently religious activities do not prohibit faith-based organizations from engaging in inherently religious activities. The restrictions only prohibit such funds from being used to support these activities. This paragraph clarifies that a faith-based organization does not have to suppress its religious identity to qualify for a grant or subgrant.

A faith-based organization that applies for or receives a grant or subgrant may maintain its character and independence, including the definition, practice, and expression of its religious beliefs, provided that it does not use the grant or subgrant to support inherently religious activities. Many faith-based organizations are concerned that they must give up their religious identity to receive Federal funding and, as a result, have not sought opportunities to use Federal funds to meet needs in their communities. This concern has served as a barrier to facilitating the contribution of faith-based organizations to aid the Department in achieving its goal of making programs more effective. The Federal Government does not ask other types of private organizations to compromise their philosophical identity or ideology to receive Federal funds so the Department does not require faith-based organizations to compromise their philosophical identity or ideology either. Faith-based organizations, like other private organizations, must use the Federal funds for the purpose of the applicable program. Clarifying that faith-based organizations do not have to suppress their religious identity encourages them to participate in the Department's programs and contributes to increasing the effectiveness of the Department's programs.

Proposed paragraph (e)—Prohibition on discrimination against program beneficiaries or prospective program beneficiaries on the basis of religion. This paragraph prohibits discrimination by private organizations against beneficiaries or prospective beneficiaries of the Department's programs on the basis of religion. One who administers or delivers services to such beneficiaries (e.g., an employee or prospective employee of a grantee or

subgrantee) is not considered a "beneficiary" or "prospective beneficiary" for purposes of this provision.

Proposed paragraph (f)—Effect of contribution of own funds. In the case of grants or subgrants that require fund matching, the Department's regulations stipulate that Federal rules apply to those matching funds. In addition, in cases where grantees and subgrantees pledge to contribute their own funding in excess of matching funds required under the grant or subgrant announcement, those excess funds pledged in the grant or subgrant application are considered part of a "grant agreement" and are therefore also subject to Federal rules.

If a grantee or subgrantee provides funds in excess of those funds stipulated in grant or subgrant matching requirements or agreements, Federal rules will not apply to the extent that those excess funds are not commingled with the funds stipulated in the matching requirements or agreement. If the excess funds are separated from those "required" funds, they will not be subject to Federal rules. If those excess funds are not kept separate from the "required" funds, they will be subject to Federal rules.

Technical amendment to § 75.532(a)(2) relating to the prohibition on use of grants to pay for equipment or supplies to be used for religious worship, instruction, or proselytization.

To clarify that grantees cannot use their grants to pay for equipment or supplies used for religious worship, instruction, or proselytization, the Department is proposing a technical amendment to § 75.532(a)(2). The Department believes that no clarification is needed for § 76.532(a)(2) relating to States and subgrantees.

Removal of §§ 75.532(a)(3) and 76.532(a)(3) relating to the prohibition on use of grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization.

The Department believes that grantees and subgrantees may use their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility only to the extent that such facilities are used for eligible Department-funded activities (and not for inherently religious activities such as religious worship, instruction, or proselytization, or any other ineligible purpose). The Department is nevertheless proposing the removal of §§ 75.532(a)(3) and 76.532(a)(3) because

there is no statutory authority for grantees and subgrantees to use their grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). The Department accordingly has no programs that fund such capital improvements. Therefore, rather than amend these provisions to clarify the limitations under which grantees and subgrantees could use their grants and subgrants if such statutory authority existed, the Department proposes simply to remove these provisions. If and when such uses are authorized by statute, the Department will issue program-specific regulations in accordance with the statute.

Removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2) relating to the prohibition on use of grants and subgrants to pay for an activity of a school or department of divinity.

Consistent with the principle that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible, the Department is additionally proposing the removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2), which prohibit grantees and subgrantees, respectively, from using their grants and subgrants to pay for an activity of a school or department of divinity. Grantees and subgrantees that use their grants and subgrants to pay for such an activity will still be subject to §§ 75.532(a) and 76.532(a), which prohibit them from using their grants and subgrants to pay for (1) religious worship, instruction, or proselytization, and (2) equipment or supplies to be used for those activities. To the extent that they perform eligible activities, however, they need not be disqualified from participating in Federal programs simply by virtue of their status as religious schools or departments.

Proposed §§ 74.44(f) (Procurement Procedures) and 80.36(j) (Procurement)

Lastly, the Department seeks to clarify that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible. Such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the

use of funds for inherently religious activities, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program. For example, a supplemental educational service provider that contracts with or otherwise receives assistance from a subgrantee pursuant to section 1116 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, is not subject to the same limitations to which grantees and subgrantees are subject regarding the use of funds for inherently religious activities because the provider, by statute, is selected as a result of the genuine and independent private choice of the parent of an eligible child. However, the provider must still satisfy all applicable statutory requirements.

Executive Order 12866

1. Potential Cost and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are minimal and arise from statutory requirements and those we have determined to be necessary for administering the Department's programs effectively and efficiently.

In assessing the minimal potential costs and substantial benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, Local, and Tribal governments in the exercise of governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations would not add significantly to the costs of implementing the Department's programs, but will significantly increase the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere in this preamble, the proposed regulations would increase the pool of potential applicants from which the Department may select grantees, the States may select subgrantees, and grantees and subgrantees may select entities with which to contract or otherwise provide assistance, thereby increasing the quantity of highly qualified private organizations that are eligible to receive

Federal funding. The proposed regulations will enable the Department to facilitate the contribution of faith-based organizations to increase the effectiveness of the Department's programs. The proposed regulations will also ensure that Federal funds are used only for proper purposes and clarify for faith-based organizations, the Department, and the public the rules for using Federal funds.

The existing procedures for ensuring that Federal funds will be used for proper purposes will be used to ensure that funds are not diverted to improper purposes. The Department will employ its standard procedures for monitoring grantees that it would employ even if the proposed regulations were not promulgated. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 75.52 *Eligibility of faith-based organizations for a grant.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations require the Department and States to administer grant programs in accordance with constitutional standards and to maximize the efficiency and productivity of such programs. States are not considered small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not require any additional information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and to strengthen federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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List of Subjects**34 CFR Part 74**

Accounting, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—Education, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

34 CFR Part 80

Accounting, Grant programs, Reporting and recordkeeping requirements.

Dated: September 22, 2003.

Rod Paige,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend parts 74, 75, 76, and 80 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. A new § 75.52 is added to subpart A under the heading “Eligibility for a Grant” to read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

(2) The Department shall not discriminate against a private organization on the basis of the organization’s religious character or affiliation.

(b) The provisions of § 75.532 apply to a faith-based organization that receives a grant under a program of the Department.

(c) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location

from any programs or services supported by a grant from the Department, and participation in any such inherently religious activities by beneficiaries of the programs supported by the grant must be voluntary.

(d)(1) A faith-based organization that applies for or receives a grant under a program of the Department may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and otherwise govern itself on a religious basis; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) A private organization that receives a grant under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary of that program on the basis of religion or religious belief.

(f) If a grantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement Federally funded activities, the grantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(Authority: 20 U.S.C. 1221e–3 and 3474)

3. Section 75.532(a)(2) is revised to read as set forth below; paragraphs (a)(3) and (4) are removed; and paragraph (b) is removed and reserved.

§ 75.532 Use of funds for religion prohibited.

(a) * * *

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(b) [Reserved]

PART 76—STATE-ADMINISTERED PROGRAMS

4. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

5. A new § 76.52 is added to subpart A under the heading “Eligibility for a Grant or Subgrant” to read as follows:

§ 76.52 Eligibility of faith-based organizations for a subgrant.

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

(2) States shall not discriminate against a private organization on the basis of the organization’s religious character or affiliation.

(b) The provisions of § 76.532 apply to a faith-based organization that receives a subgrant from a State under a State-administered program of the Department.

(c) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a subgrant from a State under a State-administered program of the Department, and participation in any such inherently religious activities by beneficiaries of the programs supported by the subgrant must be voluntary.

(d)(1) A faith-based organization that applies for or receives a subgrant from a State under a State-administered program of the Department may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and otherwise govern itself on a religious basis; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) A private organization that receives a subgrant from a State under a State-administered program of the Department shall not discriminate against a beneficiary or prospective beneficiary of that program on the basis of religion or religious belief.

(f) If a State or subgrantee contributes its own funds in excess of those funds required by a matching or grant

agreement to supplement federally funded activities, the State or subgrantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a))

§ 76.532 [Amended]

6. Section 76.532 is amended by removing (a)(3) and (a)(4); and removing and reserving (b).

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

7. The authority citation for part 74 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, OMB Circular A-110, unless otherwise noted.

8. Section 74.44 is amended by adding new paragraph (f) to read as follows:

§ 74.44 Procurement procedures.

* * * * *

(f)(1)(i) A faith-based organization is eligible to contract with or otherwise receive assistance from recipients on the same basis as any other private organization, with respect to contracts or assistance for which such other organizations are eligible.

(ii) Recipients shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

(2) The provisions of §§ 75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with or otherwise receives assistance from a recipient, unless the faith-based organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with or assistance received from a recipient and participation in any such inherently religious activities by beneficiaries of

the programs supported by the contract or assistance must be voluntary, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(4)(i) A faith-based organization that contracts with or otherwise receives assistance from a recipient may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(ii) A faith-based organization may, among other things—

(A) Retain religious terms in its name;

(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(D) Select its board members and otherwise govern itself on a religious basis; and

(E) Include religious references in its mission statement and other chartering or governing documents.

(5) A private organization that contracts with or otherwise receives assistance from a recipient shall not discriminate against a beneficiary or prospective beneficiary of the program on the basis of religion or religious belief.

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

9. The authority citation for part 80 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-102, unless otherwise noted.

10. Section 80.36 is amended by adding new paragraph (j) to read as follows:

§ 80.36 Procurement.

* * * * *

(j) *Contracting with faith-based organizations.* (1)(i) A faith-based organization is eligible to contract with or otherwise receive assistance from grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts or assistance for which such other organizations are eligible.

(ii) Grantees and subgrantees, including States, shall not discriminate against a private organization on the

basis of the organization's religious character or affiliation.

(2) The provisions of §§ 75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, unless the faith-based organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with or assistance received from a grantee or subgrantee, including a State, and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract or assistance must be voluntary, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(4)(i) A faith-based organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(ii) A faith-based organization may, among other things—

(A) Retain religious terms in its name;

(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(D) Select its board members and otherwise govern itself on a religious basis; and

(E) Include religious references in its mission statement and other chartering or governing documents.

(5) A private organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, shall not discriminate against a beneficiary or prospective beneficiary of the program on the basis of religion or religious belief.

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