

v. Washington Department of Services for the Blind, 474 U.S. 481, 488 (1986).

For example, under Section 122 of WIA, a training provider that meets certain statutory criteria may apply to be identified as an eligible provider of training services. 29 U.S.C. 2842(a). Nothing in the statutory criteria excludes religious organizations from being so identified. *Id.* In addition, under WIA Section 134(d)(4), training services for participants or beneficiaries are primarily paid for through individual training accounts (ITAs). 29 U.S.C. 2864(d)(4)(G). For these services, (1) participants select their preferred training provider from a State's list of eligible providers and receive training; and (2) the provider receives payment from the participants' ITAs through electronic transfers of funds, vouchers, or other appropriate methods. *Id.*; 29 U.S.C. 2864(d)(4)(F), "Consumer Choice Requirements"; 20 CFR 663.410.

The preamble to the WIA nondiscrimination regulations indicates that 29 CFR 37.6(f) "is directly based on, and implements, Section 188(a)(3) of WIA." 64 FR at 61698. This statement is true with regard to existing paragraphs 37.6(f)(2) and (f)(3). Compare 29 U.S.C. 2938(a)(3) with 29 CFR 37.6(f)(2) and (f)(3). Paragraph 37.6(f)(1), however, originated in the IFR promulgated by ETA to implement the general provisions of WIA, and was merely a carry-over from the JTPA regulations, with no basis in the WIA statute. When the WIA nondiscrimination IFR was promulgated seven months after ETA's IFR, paragraph 37.6(f)(1) was inserted in the nondiscrimination regulations. Compare 64 FR 18662, 18729, 18730, §§ 667.266(a), 667.275(b) (April 15, 1999), with 29 CFR 37.6(f)(1). None of the language of the WIA statute, in Section 188(a)(3) or elsewhere addresses the employment or training of beneficiaries in religious activities.

The proposed rule would amend paragraph 37.6(f)(1) to allow religious organizations to receive government financial assistance that is provided indirectly through the genuine and independent private choices of beneficiaries. The proposed new language would allow participants to use their ITAs, or similar training accounts under programs established by States or Local Workforce Investment Areas (LWIAs), for religious training, as long as the training account programs afford participants genuine and independent choice between religious and non-religious training options, and the religious organizations receiving assistance otherwise satisfy the requirements of the program.

The proposed revision to paragraph 37.6(f)(1) would provide that financial assistance provided directly to a religious organization may not be expended for religious employment or training. Further, the revised paragraph would provide that, for purposes of the paragraph, the term "direct" would mean financial assistance that is provided at the direction of a governmental entity, or an intermediate organization with the same duties as a governmental entity under this program, as opposed to financial assistance that an organization receives as a result of the genuine and independent choice of a beneficiary. See *Zelman v. Simmons-Harris*, 536 U.S. 639.

Proposed Paragraph 37.6(f)(2)

[Current paragraph 37.6(f)(2) would be redesignated paragraph 37.6(f)(3).]

Consistent with the discussion above, the proposal would add a new paragraph 37.6(f)(2) to permit WIA Title I financial assistance to be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers); that mechanism permits participants to direct the financial assistance to the provider of their choice; and the training provider that receives the assistance otherwise satisfies the requirements of the program.

The revision would also be consistent with, and would assist in implementing, the principles underlying Executive Order 13279, "Equal Protection of the Laws for Faith-Based and Community Organizations," issued by President Bush on December 12, 2002, and reprinted at 67 FR 77141 (December 12, 2002). The purposes of Executive Order 13279 include ensuring equal protection of the laws for faith-based and community organizations, and furthering the national effort to expand opportunities for, and strengthening the capacity of, faith-based and community organizations so that they may better meet the social needs in America's communities. In the Department's view, the proposed language for paragraph 37.6(f)(2) is necessary in order to comply with this requirement.

Proposed Paragraphs 37.6(f)(3) and (f)(4)

[Current paragraph 37.6(f)(3) would be redesignated paragraph 37.6(f)(4).]

The existing language of paragraphs 37.6(f)(2) and (f)(3) implements Section 188(a)(3) of the Workforce Investment Act, 29 U.S.C. 2938(a)(3), which

precludes participants in a WIA financially assisted program from "being employed to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship." This statutory prohibition covers all forms of financial assistance, including assistance that is provided as a result of the independent and private decisions of participants. WIA Section 188(a)(3) does permit participants to be employed "with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants."

Existing paragraph 37.6(f)(2) addresses the employment activities at facilities devoted to religious instruction and worship that are proscribed by WIA Section 188(a)(3) of WIA. The employment activities that WIA Section 188(a)(3) permits at facilities operated by religious organizations are addressed in existing paragraph 37.6(f)(3). In the proposed regulations, existing paragraphs 37.6(f)(2) and (f)(3) would be redesignated as paragraphs 37.6(f)(3) and (f)(4), respectively. In addition, these paragraphs were revised in this proposed rule to make them easier to understand, and to adhere more closely to the language of WIA Section 188(a)(3). The proposed revisions are not intended to alter the meaning of these paragraphs.

20 CFR Part 667

Proposed Paragraphs 667.266(b)(1) and (2)

The prohibition on employing and training participants in religious activities found in the current 29 CFR 37.6(f)(1) is also set forth in 20 CFR 667.266(b)(1) of ETA's current regulations implementing WIA. The proposal would revise the provisions in 20 CFR 667.266(b)(1) to conform them to the proposed revisions to 29 CFR 37.6(f)(1). Thus, paragraph 667.266(b)(1) in the proposed rule would provide that WIA Title I financial assistance provided directly from the State or LWIA to a religious organization may not be expended for religious employment or training. Also, proposed paragraph 667.266(b)(2) would provide that WIA Title I financial assistance may be used for religious employment and training where the State or LWIA has a mechanism for providing such assistance that gives participants a