

retain its independence and may continue to carry out its mission, including the practice and expression of its religious beliefs, provided that it does not use direct HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Emphasize that participating organizations cannot discriminate in providing assistance.* The proposed rule clarified that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, faith-based organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Clarify that HUD funds may not be used for acquisition, construction, or rehabilitation of structures to the extent those structures are used for inherently religious activities.* The proposed rule clarified that HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, the proposed rule clarified that HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. *Remove additional assurance requirements imposed only on faith-based organizations.* The proposed rule removed those provisions of HUD's regulations that required only faith-based organizations to provide assurances that they would conduct eligible program activities in a manner that is "free from religious influences." HUD imposes no comparable assurance requirements in any other context. HUD determined that it is inappropriate to require that only faith-based organizations submit additional assurances of compliance with program requirements above and beyond those

that any other applicant or recipient is required to provide. All organizations that participate in HUD programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that HUD's regulations may have disqualified faith-based organizations or indicated that faith-based organizations could be disqualified from participating in HUD's programs because the organizations are motivated or influenced by religious faith to provide social services, the proposed rule clarified that this type of restriction is inconsistent with governing law.

7. *Clarify the inapplicability of Executive Order 11246 in the context of grants.* The proposed rule amended the CDBG regulations to provide that Executive Order (E.O.) 11246 (Equal Employment Opportunity), regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60, do not apply to CDBG grantees.

II. Significant Differences Between the January 6, 2003, Proposed Rule and This Final Rule

This final rule follows publication of the January 6, 2003, proposed rule and takes into consideration the public comments received on the proposed rule. After consideration of the public comments, the significant changes made at the final rule stage are the following:

1. *Clarification of applicability of nondiscrimination requirements.* Some public commenters questioned whether the rule would reverse or supersede the applicability to program participants of nondiscrimination requirements. To the extent that statutory nondiscrimination requirements applied to participants in the HUD programs that were the subject of the January 6, 2003, proposed rule, those statutory requirements continue to apply. They are not altered by this rule.

2. *Clarification of when HUD funds may be used for acquisition, construction, or rehabilitation of real property.* The final rule clarifies that HUD funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship. Separate rooms located in a structure that contain sanctuaries, chapels, or other rooms that a HUD-funded religious congregation

uses as its principal place of worship, however, may qualify for such assistance to the extent that they are used for eligible, HUD-funded activities. This final rule also clarifies the rules governing disposition of HUD-improved real property after the term of the grant and where there is a change in the use of the property. The following provide examples of application of the revised rule:

Example 1. A one-room church applies for CDBG funds to make several necessary repairs. On Sunday morning, the church serves as a place for congregational worship. During weekdays, the church is used to operate a "soup kitchen" for homeless individuals. Accordingly, except for the few hours on Sunday morning when the church holds worship services, the one-room church is used for the purpose of providing meals to homeless individuals—a purpose that is eligible for HUD assistance. The one-room church is ineligible for CDBG-funded improvements because it is the congregation's principal place of worship.

Example 2. A synagogue with several rooms applies for CDBG funds to make necessary repairs to its "soup kitchen," which is operated from two rooms located within the synagogue basement. The congregation does not use these rooms as its principal place of worship; they are used exclusively for the "soup kitchen." Accordingly, repairs to the two rooms are eligible for CDBG assistance.

Example 3. A church applies for HUD funding to construct a homeless shelter, which will contain several rooms for use as a shelter as well as a one-room chapel to be used for weekly religious services and nightly prayer meetings. With the exception of the chapel, the homeless shelter will be used exclusively for eligible HUD-funded activities; no inherently religious activities, such as worship or religious instruction, will be conducted outside of the chapel. Homeless individuals staying at the shelter will be offered the opportunity to participate in the religious services, but attendance will be purely voluntary. HUD may assist the construction on a prorated basis, excluding the costs of the chapel.

Example 4. A mosque purchases an abandoned church and applies for HUD funding to renovate it and use it as an elderly daycare center. The planned renovation will retain the existing exterior facade of the former church, including the stained-glass windows. No inherently religious activities will be conducted within the new daycare center. Although the proposed rehabilitation involves a building formerly used as a church, the entire renovation is eligible for HUD funding because the building will be used solely for eligible HUD activities.

3. *Clarification of Applicability of E.O. 11246.* The proposed rule's exclusion of E.O. 11246 from the CDBG regulations was intended only to reflect the exemption of religious organizations from the religious nondiscrimination requirements of E.O. 11246, as provided in an amendment to E.O. 11246 by E.O.