

the separation “in time or location” restriction. The commenters wrote that the vagueness of the current language would lead to confusion among service providers. Some commenters offered suggestions for how the language could be clarified. For example, one commenter wrote that the rule should provide that the term “separation in time or location” means that clients must be allowed the opportunity to not participate in religious activities in a meaningful manner such that they do not have to hear or see the inherently religious activities. Another commenter wrote that greater clarity could be provided by specifying that religious activities must be separated by both time *and* location. Yet another commenter wrote that the final rule could more clearly define “time” by providing guidelines on an acceptable length of time between activities, such as 15 or 30 minutes.

**HUD Response.** HUD declines to adopt the suggestions raised by the commenters. HUD does not believe that the separation of time or location requirement is ambiguous and necessitates additional regulation for proper adherence. HUD believes that existing regulations and this rule are clear that faith-based organizations, using direct Federal funds for certain activities, must separate their inherently religious activities from the federally funded activities. HUD believes that a common sense approach to this regulation supported by HUD guidance, not a detailed regulatory approach, is the better one. For example, suppose that a community center is used for adult education in the evening, and that one of the organizations participating in the adult education initiative provides classes in English proficiency. The organization cannot use the English language class as a means of providing inherently religious instruction. The religious study class has to be provided in another classroom or building (separate in location) or at another time (if the same classroom is to be used). Concerning the recommendation that inherently religious activities be separated from HUD-funded activities by both time *and* location, HUD believes that this is legally unnecessary and that it would impose an unnecessarily harsh burden on small faith-based organizations, which may have access to only one location that is suitable for the provision of HUD-funded services.

**Comment:** *Restrict activities that are “inherently infused with religious doctrine.”* Two commenters wrote that there might be services provided to clients that are not inherently religious activities, but that are inherently

infused with religious doctrine. For example, case management services by counselors could be infused with religious teachings and doctrine. The commenters wrote that the final rule should prohibit any services that are infused with religious doctrine.

**HUD Response.** HUD believes that existing HUD regulations and this rule are sufficiently explicit that direct HUD funds may not be used for religious proselytization. Program participants cannot use supportive services directly funded by HUD, such as counseling, to serve as a format for proselytization. This is a violation of program requirements, and the program participant that violates the prohibition on proselytization will be subject to applicable sanctions and penalties. No additional regulatory changes are required.

**Comment:** *Ensure the availability of secular alternative service providers.* Several commenters wrote that HUD should clarify that beneficiaries have the right to receive services from a different or non-religious provider, and that the beneficiaries be informed of this right by the faith-based provider. Some commenters suggested that a list of alternative service providers be in place and distributed to all beneficiaries or potential beneficiaries. Other commenters suggested that HUD ensure that funding be made available to a variety of providers within a service area to ensure that secular alternatives are viable, appropriate, and available. The commenters wrote that without reasonable secular alternatives, beneficiaries might be forced to participate in programs provided by faith-based organizations where they may be required to participate in religious activity in order to receive essential government-funded benefits.

**HUD Response.** HUD declines to adopt the recommendations of the commenters. Under this rule, no beneficiary served by a HUD-funded provider directly funded by HUD will be required to participate in inherently religious activities as a condition of receiving services. The commenters’ recommendations run counter to the objectives that HUD is trying to achieve through this rule. HUD’s general objective is to eliminate barriers to faith-based organizations, to welcome their participation in HUD programs, and most important, to ensure they are treated like other program participants. To develop a list that highlights which HUD program providers may be faith-based organizations and which are not, would defeat the “neutrality” objective sought by this rulemaking.

## VI. Comments Regarding Religious Art, Icons, Scriptures, and Other Religious Symbols

**Comment:** *Use of religious art or icons should not be permitted.* Several commenters wrote that the use of religious art or icons can constitute a subtle but powerful form of proselytization or may be offensive to some persons. The commenters suggested that HUD prohibit the use of rooms or other space for providing HUD-funded services unless such items have been removed. Two commenters wrote that although a faith-based organization should not be required to remove icons from an existing chapel or chapel annex if they are used for providing HUD-funded services, the organization should not be permitted to have religious icons in the common area or the individual units of a HUD-funded shelter or housing project, or other HUD-funded space that is not also used for inherently religious activities.

**HUD Response.** HUD declines to impose this restriction on HUD program participants that are faith-based organizations. A number of Federal statutes affirm the principle embodied in this rule. (See, e.g., 42 U.S.C. 290kk–1(d)(2)(B).) For no other program participant do HUD regulations prescribe the types of artwork, statues, or icons that may be placed within or without the structures or rooms in which HUD-funded services are provided. A prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in the program than other organizations, and would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional church-state guidelines, a faith-based organization that participates in HUD programs will retain its independence and may continue to carry out its mission, provided that it does not use direct HUD funds to support any inherently religious activities. Accordingly, this final rule continues to provide that faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols.

## VII. Comments Regarding Nondiscrimination in Providing Assistance

**Comment:** *Include a more explicit statement prohibiting faith-based organizations from requiring program beneficiaries to participate in religious*