

activities. Two commenters wrote that HUD should strengthen the provisions of the rule specifying that participation by a beneficiary in religious activities offered by a faith-based service provider is voluntary, and that the faith-based organization may not discriminate against a prospective beneficiary for refusing to participate in such activities. The commenters wrote that while the preamble to the proposed rule provides that a religious organization may not discriminate based on "refusal to actively participate in a religious service," the regulatory text only prohibits discrimination on the basis of "religion or religious belief." The commenters suggested that the regulatory text should be revised to track the stronger language of the preamble. The commenters, however, objected to the use of the word "actively" in this preamble language and urged that HUD clarify that faith-based organizations may not discriminate against clients who refuse to participate in religious activities—whether actively or passively.

**HUD Response.** HUD believes that the language in the rule prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities is sufficiently explicit. A prohibition on discrimination against beneficiaries on the basis of religion or religious belief is straightforward and requires no further elaboration.

**Comment: Require fair housing training for staff of HUD-funded faith-based organizations. Require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries.** Two commenters wrote that training of Fair Housing Act requirements is vital to ensure that the employees of faith-based organizations understand their responsibility to provide housing services free from discrimination. Two commenters stated that the final rule should require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries, regardless of religious persuasion. Another commenter stated that HUD's rule should prohibit organizations participating in HUD-funded programs from discussing religious beliefs with prospective beneficiaries.

**HUD Response.** HUD believes that its existing regulations and this rule are clear that HUD program participants cannot discriminate in providing services to beneficiaries on the basis of their religious belief, or the absence of such belief. With respect to fair housing training and advertising standards, HUD declines to impose requirements on

faith-based organizations participating in HUD programs that are not imposed on all program participants.

**Comment: Nondiscrimination provisions fail to properly take into account the distinction between "direct" and "indirect" assistance appearing elsewhere in the proposed rule.** One commenter wrote that where the assistance is indirect, a faith-based organization, consistent with the Establishment Clause, may require beneficiaries to participate in its religious program.

**HUD Response.** This rule does not subject religious organizations that receive HUD funds as the result of a genuine and independent choice of a beneficiary—for example, where the entity administering HUD funds has established a voucher, coupon, certificate, or similar funding mechanism—to the restrictions on inherently religious activities that apply to organizations directly funded by HUD. This rule does not, therefore, prohibit "indirectly funded" organizations from offering assistance that integrates faith and social services and requires participation in all aspects of their programs. As noted in section II of the preamble to this final rule, however, the proposed rule did not offer amendments to any nondiscrimination provisions of existing statutes. Thus, to the extent that such statutes restrict the activities of indirectly funded organizations, those restrictions remain in effect. Accordingly, the statute that applies to each program should be reviewed for the scope of its applicability.

#### **VIII. Comments Regarding Executive Order 11246 and Religion as a Factor in Employment Decisions**

This final rule clarifies the applicability of E.O. 11246 to the CDBG regulations, and includes the amendment of E.O. 11246 by E.O. 13279. E.O. 13279, issued by the President on December 12, 2002, allows a government contractor or subcontractor that is a religious organization, corporation, association, educational institution, or society to take religion into consideration in the employment of individuals to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempt or excused from complying with the other requirements contained in Executive Order 11246. Thus, E.O. 11246, as amended, is applicable to HUD grantees to the same extent that it would otherwise apply.

**Comment: HUD's rationale for eliminating compliance with E.O. 11246 is flawed.** Several comments advised that HUD's approach to E.O. 11246 was flawed.

**HUD Response.** As discussed earlier in this preamble, the final rule clarifies the applicability of E.O. 11246 as amended, to the same extent that it would otherwise apply.

**Comment: Do not permit faith-based organizations to consider religion in employment decisions. Rule should prohibit employment discrimination on the basis of sexual orientation.** Several of the commenters wrote that the final rule should expressly prohibit discrimination against any employee or applicant for employment on the basis of religion. Other commenters wrote that faith-based organizations and other secular organizations may be generally able to discriminate on the basis of sexual orientation or gender identity because there does not currently exist a Federal law prohibiting this discrimination.

**HUD Response.** The purpose of this rulemaking is to eliminate barriers that HUD has imposed administratively to the participation of faith-based organizations in HUD programs. The purpose of this rule is not to establish nondiscrimination requirements or to alter existing nondiscrimination requirements. Current requirements of statute or Executive Order apply to HUD programs to the same extent that they applied under the prior rule.

**Comment: Clarify that any equal employment opportunity exemption is consistent with Title VII.** Several commenters suggested that HUD clarify that any exemption to the employment nondiscrimination requirements contained in the rule is consistent with the exemption provided by Title VII, and does not constitute a blanket exemption of equal employment opportunity. The commenters wrote that, under Title VII, religious organizations are allowed to employ individuals of a particular religion to perform the work of the religious organization, but are not exempt with respect to any other type of discrimination.

**HUD Response.** Again, it was not HUD's objective in this rulemaking to revise program requirements imposed by statute. HUD's objective in this rulemaking was to identify program requirements, imposed by HUD through rulemaking as a matter of administrative discretion, that constitute unwarranted barriers to the participation of faith-based organizations in HUD programs. As noted earlier in this preamble, existing nondiscrimination