

requirements are not altered by this rule.

Comment: Faith-based organizations should be required to abide by State and local civil rights laws. Several commenters wrote that HUD should clarify that the rule will not preempt State and local laws regarding the funding of faith-based organizations, including civil rights statutes governing employment nondiscrimination. The commenters wrote that some States and localities have stringent laws regarding the funding of faith-based groups with Federal, State, and local funds, and that it is unclear whether the proposed rule, as written, would preempt these laws that have been in effect for decades.

HUD Response. The requirements that govern funding under the HUD programs at issue in these regulations do not raise a question of preemption of State or local laws. Federal funds, however, carry Federal requirements. No organization is required to apply for funding under these programs, but organizations that apply and are selected for funding must comply with the requirements applicable to the program funds. As noted above in this preamble, language has been added to the rule clarifying that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them; however, if the funds are commingled, these regulations apply to all of the commingled funds.

IX. Comments Regarding Structures Used for Religious Purposes

As noted in section II of the preamble to this final rule, the final rule clarifies this requirement by stating 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. 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.

Comment: Government funding for religious structures is unconstitutional. Several commenters objected to the use of any HUD funds in the acquisition, construction, or rehabilitation of religious structures. The objection to this proposal included the comment that the proposed "attribution" requirements would be unenforceable by State and local agencies administering the HUD grant, and are contrary to Supreme Court decisions

that prohibit spending government funds on structures that are not exclusively secular in their use. Other comments offered that, even if the proposed rule could be effectively enforced, it would require such excessive monitoring as to constitute excessive government entanglement with religious institutions. The commenters wrote that HUD would need to establish effective safeguards to avoid the perceived constitutional pitfalls.

Other comments stated that nothing in the rule would prevent a faith-based organization from converting a HUD-funded portion of a structure for religious use at some future date. The overall concern expressed by these commenters was that these provisions would inevitably lead to the unconstitutional government funding of religion. One of the commenters wrote that, under governing legal precedent, public funds may be used by religious institutions for capital improvements only when the structures are wholly limited to secular use. Other commenters suggested that HUD require that the HUD-funded portions of a structure be used for secular purposes for the life of the building. Several commenters suggested that HUD establish procedures for recapturing the Federal assistance if the HUD-funded portion of the structure is ever used for a religious purpose.

HUD Response. In the preamble to this final rule, HUD previously addressed the issue of monitoring and enforcement. HUD finds no basis for requiring greater oversight and monitoring of faith-based organizations than other program participants simply because they are faith-based organizations. All program participants must be monitored for compliance with program requirements, and no program participant may use HUD funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the program at issue. Many nonreligious organizations participating in HUD programs also receive funding from several sources (private sources, State, or local sources) to carry out activities that are ineligible for funding under HUD programs. In many cases, the non-eligible activities are secular activities but not activities eligible for funding under HUD programs. All program participants receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. The regulations for the

programs prescribe the cost accounting procedures that are to be followed in using HUD funds.

With respect to structures, HUD believes that the prorated funding of improvements to a structure that has a mixed use—both religious and nonreligious—is not itself a violation of the Constitution. In a neutral program in which the government directly funds the capital improvements of institutions that administer Federal social welfare programs, the government need only put in place safeguards to ensure that public money is not used to finance inherently religious activities. The proposed rule satisfied this requirement by prohibiting the use of HUD funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities—a prohibition that is enforced by generally applicable cost-accounting standards carefully designed to ensure that HUD monies are not used to support any ineligible activity. Therefore, the final rule's prohibition on the funding of capital improvements for 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 simply provides extra assurance that HUD-funded capital improvements will not be used to support inherently religious activities, and HUD's rule is well within the bounds of the Constitution.

HUD disagrees with those who commented that preventing the use of direct HUD capital-improvement funds for inherently religious activities would necessarily fail or, in the process, excessively entangle the government in the affairs of recipients or subrecipients that are religious organizations. As to the question whether limiting HUD funding to eligible, nonreligious activities is possible, it merits emphasis that HUD must generally perform the very same cost-accounting functions to all organizations. Because inherently religious activities are non-HUD activities, HUD need not distinguish between program participants' religious and nonreligious non-HUD activities; the same mechanism by which HUD polices the line between ineligible and eligible activities will serve to exclude inherently religious activities from funding. This system of monitoring is more than sufficient to address the commenters' concerns, and the amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly funded programs that the Supreme Court has sustained.