

which funds may be put, and the conditions for receipt of funding. In addition, this proposed rule is designed to ensure that the implementation of the Department's programs is conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

B. Justice Department Program Regulations Amended by Proposed Rule

This rule proposes to amend the regulations for the following Justice Department components or offices:

1. Office of Justice Programs (OJP)
2. Bureau of Prisons (BOP)
3. National Institute of Corrections (NIC)
4. Community Oriented Policing Services (COPS)
5. Office for Violence Against Women (OVW)
6. United States Marshals Service
7. Asset Forfeiture and Money Laundering Section of the Criminal Division
8. Civil Rights Division

C. Proposed Regulatory Amendments

This rule proposes to make the following regulations applicable to all discretionary grant, formula grant, contract, and cooperative agreement programs listed above.

1. *Participation by faith-based organizations in Justice Department programs.* The proposed rule would make clear that organizations are eligible to participate in Department programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for Department funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, as well as state and local governments administering funds under Department programs, are prohibited from discriminating against organizations on the basis of religion, religious belief, or religious character in the administration or distribution of Federal financial assistance under social service programs, including grants, contracts, and cooperative agreements.

2. *Inherently religious activities.* The proposed rule describes the requirements applicable to all recipient organizations regarding the use of Department funds for inherently religious activities. Specifically, a participating organization may not use

direct financial assistance¹ from the Department to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Department assistance, and participation must be voluntary for the beneficiaries of the Department-funded programs or services. This requirement ensures that direct financial assistance from the Department to religious organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives Department funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct financial assistance from the Department. Thus, faith-based organizations that receive direct financial assistance from the Department must take steps to separate, in time or location, their inherently religious activities from the direct Department-funded services that they offer.

These restrictions on inherently religious activities do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the secular requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that beneficiary using Department funds under a program that is designed to give that beneficiary a choice among providers.

Correctional institutions are heavily regulated, and the degree of government control over correctional environments

means that prison officials must sometimes take affirmative steps, in the form of chaplaincies and similar programs, to introduce religion into the environment. Without such efforts to make religious accommodations, religious freedom would not exist for federal prisoners. Accordingly, the proposed rule recognizes that the legal restrictions applied to religious programs within correctional facilities will sometimes be different from the legal restrictions that are applied to other Department programs.

3. *Independence of faith-based organizations.* The proposed rule clarifies that a religious organization that participates in Department programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide Department-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Department-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Nondiscrimination in providing assistance.* The proposed rule clarifies that an organization that receives direct financial assistance from the Department shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services directly funded in whole or in part by the Department, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Assurance requirements.* This rule proposes to direct the removal of those provisions of the Department's agreements, covenants, memoranda of understanding, policies, or regulations that require only Department-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities. The Department imposes no comparable assurance requirements in any other context, and the Department believes it is unfair to require religious

¹ The term "direct financial assistance" is used here to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same responsibilities as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct financial assistance" may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). Again, in these proposed regulations, the term "direct financial assistance" has the former meaning.