

Significant Proposed Regulations

Current Regulations. Current program eligibility regulations at 34 CFR parts 75 and 76 do not state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as other private organizations, with respect to programs for which such organizations are eligible. Similarly, current procurement regulations at 34 CFR parts 74 and 80 do not state specifically that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible.

Proposed Regulations and Reasons. Proposed §§ 75.52 (Eligibility of faith-based organizations for a grant) and 76.52 (Eligibility of faith-based organizations for a subgrant) state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

The Department seeks to clarify that the most qualified applicants will receive funding under the Department's programs, and that the religious character or affiliation of the private organizations that apply will not be taken into account. For that reason, the Department is additionally proposing the removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2), which prohibit grantees and subgrantees, respectively, from using their grants and subgrants to pay for an activity of a school or department of divinity.

In addition, to clarify that grantees may not use their grants to pay for equipment or supplies used for religious worship, instruction, or proselytization, the Department is proposing a technical amendment to § 75.532(a)(2).

Moreover, although the Department believes that grantees and subgrantees may use their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility only to the extent that such facilities are used for eligible Department-funded activities (and not for inherently religious activities such as religious worship, instruction, or proselytization, or any other ineligible purpose), the Department is proposing simply to remove §§ 75.532(a)(3) and 76.532(a)(3) because there is no

statutory authority under which a grantee or subgrantee may use its grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). Because no Department program funds capital improvements for any such facility, these regulations have no application and are unnecessary.

Lastly, the Department is proposing to add a new paragraph (f) to § 74.44 and a new paragraph (j) to § 80.36 to clarify that faith-based organizations are eligible to contract with and otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible. The proposed paragraphs state that such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the use of Department funds for inherently religious activities, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

Proposed §§ 75.52 (Eligibility of Faith-Based Organizations for a Grant) and 76.52 (Eligibility of Faith-Based Organizations for a Subgrant)

Proposed paragraph (a)—Participation by faith-based organizations in the Department's programs. This paragraph clarifies that a faith-based organization is eligible to participate in the Department's direct grant programs (proposed § 75.52) and State-administered programs (proposed § 76.52) on the same basis as any other private organization, with respect to programs for which such other organizations are eligible. If a faith-based organization meets the statutory and regulatory tests for eligibility, the Department considers it eligible. The inclusion of qualified faith-based organizations increases the pool of potential applicants and enhances competition. As a result, the inclusion of qualified faith-based organizations increases the quantity of highly qualified applicants that are eligible to receive Federal funding, contributing to an increase in effectiveness of the Department's programs, a savings of Federal dollars, the generation of new ideas, and the provision of services to people who may not otherwise receive them. The Department needs the contribution of qualified faith-based organizations that serve in areas of great

need and that have strong ties to the community to achieve the Department's goal of ensuring that no child is left behind.

Consistent with this principle, the paragraph additionally provides that the Department and the States shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

Proposed paragraph (b)—Prohibition on use of funds for inherently religious activities. This paragraph clarifies that a faith-based organization that receives a grant under a program of the Department (proposed § 75.52) or a subgrant from a State under a State-administered program of the Department (proposed § 76.52) is subject to the provisions of §§ 75.532 and 76.532, respectively. Those sections prohibit grantees (§ 75.532) and States and subgrantees (§ 76.532) from using their grants and subgrants to pay for inherently religious activities, such as religious worship, instruction, or proselytization; and for equipment or supplies used for religious worship, instruction, or proselytization. Sections 75.532 and 76.532 also currently prohibit grantees and subgrantees from using their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization; and an activity of a school or department of divinity, as so defined. As explained above, however, the Department seeks to eliminate those provisions elsewhere in these proposed regulations.

Proposed paragraph (c)—Inherently religious activities that must be offered separately in time or location and be voluntary. This paragraph clarifies that a private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by grants from the Department (proposed § 75.52) or subgrants from a State under a State-administered program of the Department (proposed § 76.52), and that participation in any such inherently religious activities by beneficiaries of the programs supported by the grants or subgrants must be voluntary.

The religious liberties of program beneficiaries must be guarded. No one should be coerced into participating in inherently religious activities to receive federally funded services. Thus, the inherently religious activities of faith-based groups must be separated by time