

or location from the programs or services supported by grants from the Department or subgrants from a State under a State-administered program of the Department, and participation in such inherently religious activities by beneficiaries of the program supported by the grants or subgrants must be voluntary.

*Proposed paragraph (d)—Faith-based organizations may retain their religious character.* The restrictions on the use of grants and subgrants for inherently religious activities do not prohibit faith-based organizations from engaging in inherently religious activities. The restrictions only prohibit such funds from being used to support these activities. This paragraph clarifies that a faith-based organization does not have to suppress its religious identity to qualify for a grant or subgrant.

A faith-based organization that applies for or receives a grant or subgrant may maintain its character and independence, including the definition, practice, and expression of its religious beliefs, provided that it does not use the grant or subgrant to support inherently religious activities. Many faith-based organizations are concerned that they must give up their religious identity to receive Federal funding and, as a result, have not sought opportunities to use Federal funds to meet needs in their communities. This concern has served as a barrier to facilitating the contribution of faith-based organizations to aid the Department in achieving its goal of making programs more effective. The Federal Government does not ask other types of private organizations to compromise their philosophical identity or ideology to receive Federal funds so the Department does not require faith-based organizations to compromise their philosophical identity or ideology either. Faith-based organizations, like other private organizations, must use the Federal funds for the purpose of the applicable program. Clarifying that faith-based organizations do not have to suppress their religious identity encourages them to participate in the Department's programs and contributes to increasing the effectiveness of the Department's programs.

*Proposed paragraph (e)—Prohibition on discrimination against program beneficiaries or prospective program beneficiaries on the basis of religion.* This paragraph prohibits discrimination by private organizations against beneficiaries or prospective beneficiaries of the Department's programs on the basis of religion. One who administers or delivers services to such beneficiaries (e.g., an employee or prospective employee of a grantee or

subgrantee) is not considered a "beneficiary" or "prospective beneficiary" for purposes of this provision.

*Proposed paragraph (f)—Effect of contribution of own funds.* In the case of grants or subgrants that require fund matching, the Department's regulations stipulate that Federal rules apply to those matching funds. In addition, in cases where grantees and subgrantees pledge to contribute their own funding in excess of matching funds required under the grant or subgrant announcement, those excess funds pledged in the grant or subgrant application are considered part of a "grant agreement" and are therefore also subject to Federal rules.

If a grantee or subgrantee provides funds in excess of those funds stipulated in grant or subgrant matching requirements or agreements, Federal rules will not apply to the extent that those excess funds are not commingled with the funds stipulated in the matching requirements or agreement. If the excess funds are separated from those "required" funds, they will not be subject to Federal rules. If those excess funds are not kept separate from the "required" funds, they will be subject to Federal rules.

*Technical amendment to § 75.532(a)(2) relating to the prohibition on use of grants to pay for equipment or supplies to be used for religious worship, instruction, or proselytization.*

To clarify that grantees cannot 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). The Department believes that no clarification is needed for § 76.532(a)(2) relating to States and subgrantees.

*Removal of §§ 75.532(a)(3) and 76.532(a)(3) relating to the prohibition on use of 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.*

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 nevertheless proposing the removal of §§ 75.532(a)(3) and 76.532(a)(3) because

there is no statutory authority for grantees and subgrantees to use their grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). The Department accordingly has no programs that fund such capital improvements. Therefore, rather than amend these provisions to clarify the limitations under which grantees and subgrantees could use their grants and subgrants if such statutory authority existed, the Department proposes simply to remove these provisions. If and when such uses are authorized by statute, the Department will issue program-specific regulations in accordance with the statute.

*Removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2) relating to the prohibition on use of grants and subgrants to pay for an activity of a school or department of divinity.*

Consistent with the principle 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 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. Grantees and subgrantees that use their grants and subgrants to pay for such an activity will still be subject to §§ 75.532(a) and 76.532(a), which prohibit them from using their grants and subgrants to pay for (1) religious worship, instruction, or proselytization, and (2) equipment or supplies to be used for those activities. To the extent that they perform eligible activities, however, they need not be disqualified from participating in Federal programs simply by virtue of their status as religious schools or departments.

*Proposed §§ 74.44(f) (Procurement Procedures) and 80.36(j) (Procurement)*

Lastly, the Department seeks to clarify that faith-based organizations are eligible to contract with or 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. Such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the