

use of 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. For example, a supplemental educational service provider that contracts with or otherwise receives assistance from a subgrantee pursuant to section 1116 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, is not subject to the same limitations to which grantees and subgrantees are subject regarding the use of funds for inherently religious activities because the provider, by statute, is selected as a result of the genuine and independent private choice of the parent of an eligible child. However, the provider must still satisfy all applicable statutory requirements.

Executive Order 12866

1. Potential Cost and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are minimal and arise from statutory requirements and those we have determined to be necessary for administering the Department's programs effectively and efficiently.

In assessing the minimal potential costs and substantial benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, Local, and Tribal governments in the exercise of governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations would not add significantly to the costs of implementing the Department's programs, but will significantly increase the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere in this preamble, the proposed regulations would increase the pool of potential applicants from which the Department may select grantees, the States may select subgrantees, and grantees and subgrantees may select entities with which to contract or otherwise provide assistance, thereby increasing the quantity of highly qualified private organizations that are eligible to receive

Federal funding. The proposed regulations will enable the Department to facilitate the contribution of faith-based organizations to increase the effectiveness of the Department's programs. The proposed regulations will also ensure that Federal funds are used only for proper purposes and clarify for faith-based organizations, the Department, and the public the rules for using Federal funds.

The existing procedures for ensuring that Federal funds will be used for proper purposes will be used to ensure that funds are not diverted to improper purposes. The Department will employ its standard procedures for monitoring grantees that it would employ even if the proposed regulations were not promulgated. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading: for example, § 75.52 *Eligibility of faith-based organizations for a grant*.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations require the Department and States to administer grant programs in accordance with constitutional standards and to maximize the efficiency and productivity of such programs. States are not considered small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not require any additional information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and to strengthen federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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