

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900-AL63

VA Homeless Providers Grant and Per Diem Program; Religious Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to revise the regulations concerning the VA Homeless Providers Grant and Per Diem Program. More specifically, we propose to revise provisions that apply to religious organizations that receive VA funds under VA's Homeless Providers Grant and Per Diem Program to ensure that VA activities under this program are open to all qualified organizations, regardless of their religious character, and to clearly establish the proper uses to which funds may be put, and the conditions for the receipt of such funding.

Also, consistent with Title VII of the Civil Rights Act of 1964, we propose to remove the regulatory prohibition against religious organizations making employment decisions on a religious basis. The numerous other requirements are more than sufficient to ensure that direct government funds are not used for inherently religious activities.

DATES: Comments must be received on or before October 30, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273-9026; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL63." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332-0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In the interim final rule document published in the **Federal Register**, March 19, 2003, we revised a portion of the "VA

Homeless Providers Grant and Per Diem Program" regulations. In order to allow the public to easily review the regulatory changes, we included the entire rule text for that section, including portions that were not changing from the regulation that had already been promulgated prior to the interim final rule. The interim final regulation contained a § 61.64 concerning religious organizations, which had been promulgated previously and was not changed in the interim final rule, that reads as follows:

(a) As a condition for receiving assistance under this part, an organization that is primarily a religious organization must agree to conduct activities for which the assistance is provided in a manner that is free from religious influences and must comply with the following:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence as a condition of the provision of housing and supportive services.

We propose to revise § 61.64, consistent with Executive Order 13199 ("Establishment of White House Office of Faith-Based and Community Initiatives") and Executive Order 13279 ("Equal Protection of Laws for Faith-Based and Community Organizations"), to ensure that VA programs under this part are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put, and the conditions for the receipt of such funding. Accordingly, we propose to revise § 61.64 in accordance with the following principles.

1. *Participation by faith based organizations in VA programs.* The proposed rule would make clear that organizations are eligible to participate in VA programs under this part without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for VA funds under this part because they are religious. Specifically, religious organizations would be eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit

organizations. Also, the Federal Government, as well as State and local governments administering funds under VA programs under this part, would be prohibited from discriminating against organizations on the basis of religion or their religious character.

2. *Faith-based activities.* The proposed rule would describe the requirement applicable to all recipient organizations regarding the use of VA funds under this part for faith-based activities. Specifically, a participating organization could not use direct VA funds under this part to finance 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 VA assistance, and participation must be voluntary for the beneficiaries of the directly funded programs or services under this part. This requirement would ensure that direct VA funds under this part provided to religious organizations are not used to support inherently religious activities. Thus, VA funds under this part provided directly to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

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

The proposed rule defines the meaning of "direct financial assistance" and "indirect financial assistance." We note, however, that VA currently has in place only programs that provide direct financial assistance to participating organizations.

3. *Independence of faith-based organizations.* The proposed rule clarifies that a religious organization that participates in VA 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 VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations