

may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-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 participates in a VA program under this part shall not, in providing service funded in whole or in part by VA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. *Assurance requirement.* The proposed rule would remove those provisions of VA's regulation that require only VA-funded religious organizations to provide assurance that they will conduct eligible program activities in a manner that is "free from religious influences" as VA imposes no comparable assurance requirements in any other context. VA believes it is unfair to require religious organizations alone to provide additional assurance, above and beyond those any other organization is required to provide, that they will comply with VA requirements. All organizations that participate in VA programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of VA-funded activities, including those prohibiting the use of direct financial assistance from VA to engage in inherently religious activities. In addition, to the extent that provisions of VA's regulation disqualify religious organizations from participating in VA's program because they are motivated or influenced by religious faith to provide social services, the proposed rule removes that restriction, which is inconsistent with governing law. Such requirements may have a "chilling effect" on religious organizations, many of which are motivated by their faith to provide VA-funded social services or view the provision of such services as a "ministry."

As noted above, current § 61.64 provides that as a condition for receiving assistance an organization that is primarily a religious organization must agree not to discriminate against any employee on the basis of religion and could not limit employment or give preference on the basis of religion. We propose to delete the hiring restriction.

Section 702 of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberties of communities of faith. The proposed regulation thus reflects the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

Comment Period

As noted above, an interim final rule revising the VA Homeless Providers Grant and Per Diem regulations became effective on March 19, 2003. We will begin working on a final rule relating to the interim final rule as soon as the comment period for the interim final rule closes. We are providing a 30-day comment period for this proposed rule concerning religious organizations so that any resulting changes can be included in said final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. This proposed rule merely ensures that religious organizations are treated the same as other participants in the Homeless Providers Grant and Per Diem Program. It creates no new economic impact. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure

by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: May 30, 2003.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 61 as follows:

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note.

2. Revise § 61.64 to read as follows:

§ 61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. Neither the Federal Government nor a State or local government receiving funds under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

- (i) Religious worship, instruction, or proselytization; or
- (ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, "indirect financial assistance" means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. "Direct financial assistance," means Federal aid