

Response: The final rule provides that religious organizations receiving SAMHSA discretionary funds will be subject to audit, just like any other non-governmental organization receiving such funds. The faith-based organization is to use the funds in accordance with the grant and all applicable laws and regulations. For discretionary grants, as provided in 45 CFR 74.26 and 92.26, SAMHSA grantees are responsible for obtaining audits by an independent auditor following generally accepted government auditing standards, in accordance with applicable OMB circulars. When the State is the grantee, the State is responsible for the appropriate use of its SAMHSA funds, so the organization (as the subgrantee) needs to be able to show to the State and the auditor that it used the funds for the purpose intended by the State. This must also be in accordance with the Single Audit Act and OMB Circular A-133.

Moreover, HHS is authorized to conduct any additional audits or reviews that are warranted, irrespective of the amount of Federal funds expended by the grantee annually, in order to ensure compliance with program requirements including the restriction against funding of inherently religious activities. HHS may determine that such audits or reviews are warranted based upon any information received by the agency that raises an issue concerning the propriety of expenditures.

Comment: Several commenters were concerned about religious organizations operating as intermediary organizations. One commenter notes that the "proposed rule creates the risk that comparable religious intermediaries will not act in a religiously neutral manner." Another commenter believed using such intermediaries has the effect of advancing religion and noted that the delegation of governmental authority to a religious organization violates the Establishment Clause. Another commenter believed it would raise questions about the accountability of tax dollars and that it promotes religion.

Response: We do not agree that the use of a religious organization as an intermediate organization is unconstitutional. Our review did not disclose any precedents, legal or otherwise, that would prevent a governmental unit from selecting a religious organization as an intermediate organization. The purpose of the regulations at sections 54.12 and 54a.12 is not to delegate authority to organizations to carry out tasks that are traditionally reserved for a governmental agency. It simply

recognizes what has occurred in States already—that is, States have used block grant funds to contract with intermediaries to manage programs and make sub-awards to other organizations as part of their substance abuse service systems. Although such intermediary organizations may be utilized, we emphasize that the governmental unit that procures such services is accountable for Federal funds and must assure that the intermediary abides by all statutory and regulatory requirements, including these regulations, and must assure that the intermediary acts in a religiously neutral manner and that direct funds are not expended for inherently religious activities.

Educational Requirements for Personnel in Drug Treatment Programs (Sec. 54.13 and 54a.13)

This provision, restated directly from SAMHSA's Charitable Choice laws, seeks to redress "unduly rigid or uniform educational qualification for counselors and other personnel in drug treatment programs." States establish such licensure and certification requirements.

Comment: Of the eighteen comments received on this section, sixteen stressed that faith-based organizations should have to meet the same licensing and certification requirements as other providers. One commenter noted that language should be clarified that the goal of this section is to ensure non-discrimination against training programs offered by religious organizations, rather than to loosen State requirements designed to ensure quality of care to clients.

Response: The final rule restates the statutory requirement of 42 U.S.C. 290kk-3, which provides that, in determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, *so long as such education and training is comparable to the coursework or training provided by nonreligious organizations or is substantially equivalent to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied* (emphasis added).

In keeping with its approach to provide States with wide flexibility in implementing the alternative service

provisions, the Department is enabling the States to determine whether the education and training provided by a religious organization is "substantially equivalent" to that provided by nonreligious organizations, and is in accordance with applicable State certification and licensure requirements. States are encouraged to provide simplified information about their State's certification and licensure requirements to religious organizations, highlighting, if appropriate, different requirements for different stages of treatment (e.g., outreach versus medically-indicated treatment).

Comment: Two commenters felt that faith-based organizations should be provided more flexibility, with one commenting that "[S]tates should reconsider their existing certification requirements to ensure that their existing certification requirements do not unnecessarily discourage alternative treatment strategies and thus the involvement of new providers." The commenter also suggested that "SAMHSA provide guidance on the range of drug treatments that are effective and on the range of educational paths that prepare people to offer those different treatment modalities."

Response: The Department urges the States to work with their faith-based providers to ensure that these providers have clear information on licensure and certification requirements, and to ensure that new providers are encouraged and supported. With regard to guidance from the Department on types of drug treatment, we refer interested parties to the full range of SAMHSA's Treatment Improvement Protocols (TIPS), available at www.samhsa.gov.

Comment: Several commenters noted that substance abuse treatment is a medical treatment, not a social service, and that "prevailing models treat addiction as a biopsychosocial disorder," not a social problem.

Response: The Department agrees that certain aspects of substance abuse treatment are medical in nature. State licensure and certification systems recognize this characterization as well. SAMHSA encourages States to work with their provider community to clarify different treatment alternatives.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the