

We do not agree with the contentions that vouchers for religiously based services would violate the Establishment Clause, force individuals to attend “pervasively sectarian” institutions, or lack secular purpose, for the following reason: the Supreme Court has upheld the constitutionality of mechanisms of indirect aid, such as vouchers. Therefore, we think that it is reasonable to conclude that neutral, indirect aid to a religious organization does not violate the Establishment Clause.

#### *Applicability of Charitable Choice to the PATH Program*

SAMHSA’s program, Projects in Transition from Homelessness (PATH), funds outreach and some substance abuse services for homeless persons with mental illness. The Department has determined that the Charitable Choice provisions apply to the programs under PATH that provide substance abuse services.

*Comment:* Several commenters were concerned that the State PATH offices have “no administrative capacity to monitor such reporting of client specific information.” They also commented that, because the reporting burden “doesn’t seem to quite fit with the PATH program, implementing the Charitable Choice regulation for PATH will require development of an entirely new planning and accounting system.”

*Response:* The Department appreciates these concerns, but is confident that, with sufficient flexibility, States will be able to develop client referral and monitoring systems that will enable PATH grant officials to comply with the regulation.

#### *Executive Order 12866*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is a “significant regulatory action” under Section 3(f) of the Executive Order, and the Office of Management and Budget has therefore reviewed it under that Order.

#### *Paperwork Reduction Act of 1995*

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and record keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Regulations to Implement SAMHSA’s Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a.

*Description:* Section 1955 of the Public Health Service Act (42 U.S.C. 300x–65), as amended by the Children’s Health Act of 2000 (Pub. L. 106–310), and sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk, *et seq.*), as added by the Consolidated Appropriations Act (Pub. L. 106–554), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the SAPT Block Grant, PATH formula grant program, and to certain SAMHSA discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, record keeping and disclosure requirements of the regulations allow maximum flexibility in implementation and impose minimum burden.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Response burden estimate:* This rule includes requirements for disclosure by program participants to program beneficiaries of their rights to receipt of services from an alternative service provider, for notification by program participants to the applicable level of government of referrals made to

alternative service providers, and requirements for reporting of activities to comply with these regulations. The rule also requires that a program participant under the SAPT Block Grant and the PATH programs that believes it would be substantially burdened by application of the requirements of 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) must sign a certification to that effect and must maintain documentation to support the certification.

*Comment:* SAMHSA received three comments related to response burden estimates. One comment noted that States would need to enhance their current data systems to track an individual’s choice of providers or referral between providers.

*Response:* The regulations do not require that States track individuals. They require only that a religious organization that is a program participant refer a beneficiary who objects to the religious character of the organization to an alternative provider and that the program participant notify the State of the referral. Each State or local government may determine its own reporting procedures.

*Comment:* One State commented that it believes the annual burden estimates are not supported with reliable data.

*Response:* At the present time, there is no known source of information to quantify precisely the numbers or proportions of program beneficiaries who will request referral to alternative providers. The Department believes that less than one percent, the proportion suggested by the commenter, of program beneficiaries will make such requests.

*Comment:* A third State commented that the burden of implementation will depend on the number of objections from beneficiaries.

*Response:* The Department agrees with the State that this is true. However, the Department believes that there will be a minimal number of program beneficiaries who request referral to alternative providers and that the flexibility provided with regard to implementation will minimize information collection burden. Experience in the first several years of implementing the rule will provide an empirical basis for any adjustments of burden estimates associated with the information collection requirements.