

The rule simply allows faith-based organizations to compete for a wider range of government funding on an equal footing as other qualified applicants. The economic impact stems from the individual funding opportunities, which are not included in this rule. We have certified that this rule will not have a significant impact on small entities, and therefore a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. In the NPRM, we specifically solicited comments from State and local government officials.

Comment: Two commenters specifically mentioned that we should have consulted with State and local officials before the issuance of a final rule.

Response: We believe that our solicitation of comments from the public in the NPRM satisfied the consultation requirement of Executive Order 13132. SAMHSA provided a comment period, during which time the agency heard from many State agencies and local providers, and the rules have been drafted in a manner that provides States flexibility.

Dated: September 22, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons set forth in the preamble, 42 CFR chapter I and 45 CFR Subtitle A are amended as follows:

42 CFR CHAPTER I

■ 1. Part 54 is added to read as follows:

PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

Sec.

- 54.1 Scope.
- 54.2 Definitions.
- 54.3 Nondiscrimination against religious organizations.
- 54.4 Religious activities.
- 54.5 Religious character and independence.
- 54.6 Employment practices.
- 54.7 Nondiscrimination requirement.
- 54.8 Right to services from an alternative provider.
- 54.9 Assurances and State oversight of the Charitable Choice requirements.
- 54.10 Fiscal accountability.

- 54.11 Effect on State and local funds.
- 54.12 Treatment of intermediate organizations.
- 54.13 Educational requirements for personnel in drug treatment programs.

Authority: 42 U.S.C. 300x–65, *et seq.*, 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

§ 54.1 Scope.

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21 *et seq.*, and 42 U.S.C. 290cc–21 to 290cc–35. This part does not apply to direct funding under any such authorities for activities that do not involve the provision of substance abuse services, such as for infrastructure activities authorized under Section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

- (1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x–66, and
- (2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the U.S. Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties under this part as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of religion or the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious