

or State MOE funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the Federal TANF or State MOE funded services they provide, provided they otherwise satisfy the requirements of the program.

*Comment:* Some commenters expressed concern that the "inherently religious activities" only need to be offered separately in time or location from the benefits and services provided with direct Federal TANF or State MOE funds. They recommended modifying the regulations to stipulate that if an organization conducts inherently religious activities, then it must offer them separately in both time and location.

*Response:* We decline to accept this recommendation. HHS believes that this is legally unnecessary and that it would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of the service(s). However, this does not preclude an organization that receives direct Federal TANF or State MOE funds from choosing to set apart such activities in both time and location.

*Comment:* One commenter considered the requirement of separating the inherently religious activities in time or location as insufficient guidance, and recommended that we define religious content and context and add these terms to the regulation. Another commenter asked what constituted an inherently religious activity. The commenter further stated that the exclusion of all "inherently religious" activities from government funding is flawed, and puts many faith-based organizations in the position of having to choose either to deny their core religious perspectives on social issues or to reject government funds for their programs that accomplish the government's objectives. A third commenter noted that the phrase "inherently religious activities," coupled with "such as" opens the door to concluding that activities like providing food for the hungry, or shelter for the homeless, could be considered an inappropriate use of TANF funds, if such activities have been undertaken for religiously informed reasons.

*Response:* We decline to add definitions of religious content and context into the regulation. We also decline to define "inherently religious," except through the examples given in the regulation. The examples are not all-inclusive, as indicated by the introductory phrase "such as." The examples include worship, religious

instruction, or proselytization. These are the very examples given in PRWORA as amended, section 104(j) (42 U.S.C. 604a(j)), in the provision limiting the use of Federal TANF or State MOE funds provided directly to institutions or organizations for the delivery of services to TANF-eligible beneficiaries. (Other basic examples include prayer meetings and devotional studies of sacred texts.) As some of the commenters noted, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Our approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. The Court has explained, however, that prayer and worship are inherently religious, but that social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of "ministry." We have added "Federal" and "State" where applicable, to clarify that the rule applies to both Federal TANF and State MOE funds.

In using the term "inherently religious," we simply wanted to set forth a basic framework of understanding as to appropriate and inappropriate uses of direct Federal TANF or State MOE funds. In other words, direct Federal TANF and State MOE funds may only be used for the non-religious services and functions offered by a religious organization, but not for any part of those services constituting the group's "inherently religious" beliefs or practices. Hence, the organization's inherently religious functions must be separated—i.e., in time or location, as expressed by the regulation. Any inherently religious activities must be funded entirely by private funds.

Some organizations may be unable or unwilling to structure their program by separating its inherently religious activities in time or location, as required. These organizations would not qualify to provide any of the State's directly funded social service activities, but could be considered candidates for providing assistance through indirect funding methods.

This limitation on the use of the direct funds is not meant to put an organization in the position of having to deny its core religious perspectives on social issues or reject government funds for its programs that are consistent with the purposes of the TANF program. We

recognize that while the government regards services like feeding the hungry and housing the poor as social services or secular work, some organizations may regard these same activities as acts of mercy, spiritual service, fulfillment of religious duty, good works, or the like. Nevertheless, as a general matter, an activity such as providing food for the hungry or shelter for the homeless would constitute an appropriate use of funds, as long as any inherently religious activities offered by the organization are separate, privately funded, and voluntary.

*Comment:* One commenter hoped that we would retain the requirement that organizations offer inherently religious activities separately in time or location from the social services funded with direct Federal TANF or State MOE funds. The commenter also agreed that the beneficiary's participation must be voluntary. Other commenters expressed concern that § 260.34(b) (now § 260.34(c)) does not adequately protect participants who do not wish to participate in inherently religious activities. The commenters suggested that we strengthen the provision in this subsection so clients may not be coerced, explicitly or tacitly, to participate in religious activities, or feel pressured to participate in such activities. These commenters argued that individuals in need are not always in a condition to make a thoughtful and well-considered decision whether or not to participate in worship or similar activities offered by a religious social service provider, particularly when the individual is in great need of the service.

*Response:* We believe that the provision suffices as written. However, we will use this opportunity to reaffirm that a person's participation in any religious activities must be entirely voluntary or noncompulsory. Beneficiaries of directly funded Federal TANF or MOE social services have the right not to take part in any unwanted religious practice. Therefore, they may, at any time, refuse to participate in inherently religious activities. We recommend that States and organizations help to ensure that clients and prospective clients have a clear understanding of the services offered by an organization by having literature available to give to the client which fully explains the services offered, including any inherently religious activities, as well as the individual's rights.

*Comment:* One commenter wrote that the rules should clarify that individuals who refuse to participate in the inherently religious activities will not