

be excluded from the program and will not suffer any discrimination in the administration of the program. Congress specified that Federal funds may not be used for religious purposes, but the rules provide no enforcement mechanism, so beneficiaries have no administrative relief if violations occur.

Response: The TANF Charitable Choice provision at section 104(g) of PRWORA as amended (42 U.S.C. 604a(g)) explicitly prohibits a religious organization from discriminating against a participant on the basis of religion, religious belief, or refusal to participate in a religious practice. The final rule reiterates this requirement in § 260.34(f). For example, if the service provider is a faith-based organization (FBO), the FBO may not discriminate against the individual on account of religion, a religious belief or a refusal to hold a religious belief. In addition, the FBO may not turn away a beneficiary from the organization's program solely because the beneficiary refuses to participate in an inherently religious practice. Hence, this provision insures the beneficiary's right not to take part in any unwanted religious practices. The individual's participation in an inherently religious activity must be entirely voluntary or noncompulsory. Under the TANF Charitable Choice provisions, government may not compel an individual, through loss of public benefit or advantage, to profess a religious belief or to observe an inherently religious practice. Furthermore, the TANF Charitable Choice provision at section 104(i) of PRWORA as amended (42 U.S.C. 604a(i)) states "Any party which seeks to enforce its right under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation." "Any party" includes the beneficiary. We inadvertently omitted the statutory right to assert a civil action in State court from the proposed regulation. We have added this provision to the final regulation at § 260.34(l).

Comment: One commenter wrote that individuals actually providing government-funded social services should not be involved in "offering" an inherently religious activity to program recipients. Another commenter expressed concern over allowing recipients to volunteer to participate in religious practices or services, because this will force administrative complexity on the State. A third commenter asked whether a participant could volunteer to participate in a religious activity in lieu of or during the

time that TANF-funded activities are conducted.

Response: If the opportunity to participate in inherently religious activities is offered at all, then it would be the organization receiving the Federal TANF or State MOE funds that would offer it. Thus, while we recognize that staff working for the organization might offer the TANF beneficiary the opportunity to participate in an inherently religious activity, we believe that the act of "offering" is attributable to the organization and its own staff, not to the TANF agency. Therefore, we conclude that the "offer" does not violate the Charitable Choice requirement at § 260.43(c) provided participation is voluntary. The regulation at § 260.34(c) requires that "If an organization conducts such (inherently religious) activities, it must offer them separately * * * and participation must be voluntary for the beneficiaries of those programs or services."

In providing the direct funding to pay for social service benefits, the TANF agency or any other part of the government must neither support nor sponsor any of the organization's inherently religious activities. Also, the government may not encourage (or, for that matter, discourage) the beneficiary to participate in any inherently religious activities. Hence, we see no reason why a beneficiary's own choice to participate in an inherently religious activity provided by an organization should present an administrative complexity to the TANF agency. Additionally, neutral direct aid to an organization does not mean, absent evidence to the contrary, that the organization will divert any part of the Federal TANF or State MOE funds to pay for inherently religious activities that a beneficiary attends voluntarily. And, there is nothing in the TANF Charitable Choice provisions that prevents States from implementing reasonable and prudent procurement policies to prevent funds from being misapplied to finance such activities.

Finally, under TANF, States generally have broad discretion in establishing the objective eligibility criteria that the individual or family must meet in order to receive particular benefits (whether that benefit is directly or indirectly funded). We do not prescribe how a State determines the beneficiary's eligibility or continued eligibility for the benefits. States may even attach conditions to the beneficiary's receipt of the TANF or MOE-funded benefit (e.g., attendance requirement/absentee limits for participation in a job training or job skills upgrade class). If the individual does not satisfy the conditions

established for the receipt of the benefit, then the State could treat the expenditure as an overpayment subject to recovery.

Comment: One commenter wrote that the definition and distinction between direct funding and funding an organization receives as a result of the independent private choice of a beneficiary has significance for constitutional reasons and should be retained.

Response: We agree, and have retained the distinction applicable to the funding restrictions on inherently religious activities.

Comment: One commenter asked us to clarify that, where assistance is "indirect," a faith-based organization may, consistent with the Establishment Clause, require beneficiaries to participate in its entire program, including the inherently religious components.

Response: Indirect Federal TANF or State MOE funding methods enable the individual to choose where he or she wants to receive the needed services. Therefore, the organization providing the service to the beneficiary may invite (not require) the beneficiary to participate in inherently religious activities as part of its entire program. This is because the statute at section 104(g) of PRWORA (42 U.S.C. 604a(g)) prohibits an organization from discriminating against an individual in rendering assistance on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to actively participate in a religious practice. So, the individual has the right to refuse to participate in the religious practice and may not be deprived of the offered social services. Or, if the individual wants to receive the service from an alternative provider because he or she objects to the religious character of the organization or institution, then the State must use an alternative provider to furnish the service.

The TANF Charitable Choice prohibition at section 104(j) of PRWORA as amended (42 U.S.C. 604a(j)) speaks to funds "provided directly to institutions or organizations." It does not include "indirect funding." As a result, organizations that receive funds indirectly (e.g., by means of vouchers or certificates) do not have to separate, in time or location, their inherently religious activities from the Federal TANF or State MOE funded services they furnish—provided they otherwise satisfy the requirements of the program.

However, the alternative provider requirement at section 104(e) of PRWORA as amended (42 U.S.C.