

management, accounting, and reporting on subgrantee activities, an intermediate organization, like a State grantee, is held to the requirements enunciated in the Federal regulations at 45 CFR Part 92 (which implements the provisions of OMB Circular A-103) and OMB Circulars A-87 and A-133 on the Single Audit Act. Given that both the State and its intermediate organization are subject to these existing requirements, we see no need to further regulate in this area. Regulating on nondiscrimination is also unnecessary since intermediate organizations are covered by the provisions at § 260.34(e) and (f) of this rule along with the protections offered by other Federal civil rights laws as listed at 45 CFR 260.35.

On the issue of whether or not we should permit an FBO to serve as an intermediate organization, we have decided to maintain the position taken in the NPRM—*i.e.*, to allow a State to select an FBO as an intermediate organization. We believe that our rules on fiscal accountability, on the obligations of such intermediate organizations, and on the prohibition on the use of Federal TANF or State MOE funds for inherently religious activities are sufficient protections against the possibility that an FBO will use these funds to advance its religious beliefs.

This final rule corrects a typographical error in the NPRM. The lead sentence after the heading “Treatment of Intermediate Organizations” in the preamble to the NPRM incorrectly referred to paragraph (i); the correct paragraph in the NPRM was (j). This provision now appears in § 260.34(k) of in the final rule.

XIII. Regulatory Analysis

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia,

and certain Territories. Therefore, we certify that this rule will not have a significant impact on small entities.

Comment: One commenter stated that the rule should be considered “major” because it will have a significantly adverse impact on employment by allowing for discrimination based on religion.

Response: We disagree. For years, section 702(a) of the Civil Rights Act of 1964 as amended has relieved religious organization from compliance with Title VII employment nondiscrimination requirements. Therefore, we believe that there will not be any significant adverse impact on employment.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a “significant regulatory action” under the Executive Order, and therefore has been reviewed by the Office of Management and Budget. This rulemaking implements statutory authority and reflects our response to comments received on the NPRM that we issued on December 17, 2002 in 67 FR 77362 (2002).

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 private sector, of \$100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

Comment: Two commenters mentioned that this rule would result in expenditures in excess of the \$100 million threshold.

Response: We disagree. Conditions attached to federal grant programs are not generally considered “mandates” under The Unfunded Mandates Reform Act (UMRA) of 1995. Nevertheless, with a large program like the TANF program, a new grant condition or reduction in federal financial assistance could be considered a mandate if States lack the flexibility to offset the new costs or the loss of Federal funding with reductions or other design alternatives elsewhere in

the program. For example, under the Charitable Choice provisions, when an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the State or local agency must refer the individual to an alternative provider of services. While this could be viewed as an additional expenditure for the State, we have concluded that this does not trigger the requirement under section 202 of the UMRA of 1995. In addition to the fixed amount of their own money that States must spend toward their maintenance-of-effort requirements, States also receive annual Federal funding. Furthermore, the welfare reform law gave States broad flexibility to provide a variety of benefits and services for their clientele. In determining which services to provide, States know that they have to prioritize the needs of their clientele by balancing funding options and strategies that best address these needs with budgetary considerations. For example, some providers are able to offer more than one service, including the service the individual is entitled to receive from an alternative provider.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulation and Policies on Families

We certify that we have made an assessment of this rule’s impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock childbearing. This rule expands the pool of providers that States may contract with in order to deliver effective services that support the purpose of the TANF program.

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 in the NPRM satisfied the