

claimed to meet the MOE requirements of section 409(a)(7) of the Social Security Act. Subject to the requirements of paragraph (j), when State or local funds are used to meet the TANF MOE requirements, the provisions apply irrespective of whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs.

(j) Preemption. Nothing in this section shall be construed to preempt any provision of a State constitution, or State statute that prohibits or restricts the expenditure of segregated or separate State funds in or by religious organizations.

(k) If a non-governmental intermediate organization, acting under a contract or other agreement with a State or local government, is given the authority under the contract or agreement to select non-governmental organizations to provide Federal TANF or MOE funded services, the intermediate organization must ensure that there is compliance with the Charitable Choice statutory provisions and these regulations. The intermediate organization retains all other rights of a non-governmental organization under the Charitable Choice statute and regulations.

(l) 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.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1050

#### RIN 0970-AC13

### Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Charitable Choice statutory provisions in the Community Services Block Grant Act ("CSBG Act"). These provisions apply to programs authorized under the Act, including the Community Services Block Grant

Program, Training, Technical Assistance and Capacity Building Program, Community Food and Nutrition Program, National Youth Sports Program, and discretionary grants for economic development, rural community development, and neighborhood innovation, which are all administered by the Administration for Children and Families (ACF). It is ACF's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for funding, and ACF supports the participation of faith-based organizations in these programs.

**EFFECTIVE DATE:** October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Clarence Carter, Director, Office of Community Services (OCS), Administration for Children and Families (ACF), United States Department of Health and Human Services, at (202) 401-9333.

**SUPPLEMENTARY INFORMATION:** On December 17, 2002, the Administration for Children and Families (ACF), Department of Health and Human Services (HHS), published in the **Federal Register** (67 FR 77368) a proposed rule to implement the Charitable Choice statutory provisions of section 679 of the Community Services Block Grant Act ("CSBG Act"). Title 42 U.S.C. Section 9920. Section 679 of the CSBG Act provides for the participation of religious organizations in programs authorized by the Act. ACF provided a 60-day comment period on the proposed rule, which ended on February 18, 2003.

The proposed rule was issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by Title 42 U.S.C. 9901. Section 9901 authorizes States to provide an opportunity for active participation by faith-based groups, as well as other charitable, private, and neighborhood-based organizations, in programs directed to eliminate poverty.

Title II of the Community Opportunities, Accountability, and Training and Education Services Act of 1998 (COATS) (Pub. L. 105-285) sets forth certain "Charitable Choice" provisions clarifying Federal, State, and local authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency in programs authorized under the CSBG Act. In addition to giving families a greater choice of providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds

without impairing the religious character of such organizations and without diminishing the religious freedom of the CSBG Act recipients.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer numerous social services to those in need. The Charitable Choice provisions in the CSBG Act are consistent with the Administration's belief that there should be an equal opportunity for all organizations, both faith-based and nonreligious, to participate as partners in Federal programs to serve Americans in need.

The Charitable Choice provisions in the CSBG Act contain important protections both for religious organizations that receive funding, and for the individuals who receive their services. This Final Rule implements the Charitable Choice provisions applicable to Federal, State, and local governments when funding public and private organizations—including religious organizations. This final rule is intended to ensure that the CSBG Act programs are open to all eligible organizations, regardless of their religious affiliation or character.

### Response to Comments Received on the Proposed Rule

Thirteen organizations submitted comments on the proposed rule. The majority of the comments were from organizations that focus on civil liberties and/or separation of church and state. Comments were also received from major national religious organizations that provide social services, and also representatives of community action agencies (CAAs).

While three national religious organizations supported the proposed rule as drafted, a majority of the comments took issue with major provisions, including those designed to keep religious activities separated from social services, safeguard the identity and functional options of religious organizations, protect the rights and options of beneficiaries, and assure appropriate accounting of expended funds.

The following is a summary of comments by issue, and the Department's response to those comments: