

*Eligibility of Religious Organizations
(Section 1050.3(a)(1) and (2))*

Comments: Several comments questioned the constitutionality of funding what could be “pervasively” religious organizations. They asked that the rule’s language be strengthened to assure that religious programs that receive public funds for secular services “provide such services in a completely secular manner and setting.” Three comments supported the proposed rule as drafted.

Response: We do not agree with the commenters. Religious organizations that receive direct CSBG Act funds cannot use such funds for inherently religious activities. These organizations must ensure that religious activities are separate in time or location from the treatment services and they must also ensure that participation in such religious activities is voluntary. Furthermore, they are prohibited from discriminating against a program beneficiary on the basis of religion or a religious belief.

The Supreme Court’s “pervasively sectarian” doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even “secular” tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell v. Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O’Connor’s opinion in that case set forth reasoning that is inconsistent with its underlying premises, *see id.* at 857–858 (O’Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of “actual diversion of public support to religious uses”). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions’ religious purposes, and that view is the foundation of the “pervasively sectarian” doctrine. We therefore believe that when current precedent is applied to a social service program, or to the CSBG Act Charitable Choice provisions, government may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

*Separating Religious Activity From
Social Services (Section 1050.3(b))*

Comments: Most of the comments asked for alternative language to ensure complete separation of religious activities from secular activities being provided by religious organizations.

Several suggested changing the phrase “separated, in time or location,” to “time and location.” Three comments supported the rule as drafted.

Response: The language in the proposed regulation provides appropriate safeguards to separate religious activities from secular activities supported by programs covered by this statute and regulation. As stated in the explanation of the proposed rule, program funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct funding under the CSBG Act, and participation must be voluntary for the program participants. This requirement ensures that program funds provided directly to religious organizations are not used to support inherently religious activities. Thus, funds provided directly under the CSBG Act to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious. Additionally, organizations may not fund these activities with cost sharing or matching funds, which must be used in a manner consistent with the federal funds. Moreover, a requirement that participating faith-based organizations separate their inherently religious activities from HHS-funded activities in both time and location 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 HHS-funded services.

*Independence of Religious
Organizations (Section 1050.3(c))*

Comments: Several comments questioned the ability of religious organizations to retain their governing structures, which may permit discrimination on the basis of religious belief, when the current CSBG statute calls for tripartite governing boards that represent the broad community to be served. Three comments supported the proposed rule as drafted.

Response: The Charitable Choice provisions must be implemented within the context of the authorizing legislation. The Community Services Block Grant Program under the CSBG Act contains specific requirements concerning CSBG “eligible entities.” The law requires that all “eligible entities” in that program administer

CSBG Act funds “through a tripartite board * * * that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.” (Title 42 U.S.C. 9910). Section 9910 further requires that the tripartite board include equal representation from elected public officials, representatives of low-income families in the neighborhoods served, and officials or members of business, industry, labor, religious, law enforcement, education or other major groups interested in the community served. We believe that religious organizations that become “eligible entities” to receive CSBG Act funding can comply with the board requirements of the CSBG Act so long as the members of their boards that oversee services and programs funded by the CSBG Act are truly representative of these three constituencies.

*Employment Discrimination (Section
1050.3(d))*

Comments: A majority of comments: (1) Objected to the proposed rule interpretation that religious organizations are exempt from Title VII of the Civil Rights Act that prohibits employment discrimination on the basis of religious belief; and (2) want applicable State and local antidiscrimination statutes to apply to religious organizations receiving social services funding. One comment objected to the ability of religious organizations to discriminate on the basis of sexual orientation and gender identity. Three comments support the proposed rule as drafted.

Response: The receipt of funds from programs authorized in the CSBG Act does not affect a participating religious organization’s exemption provided under 42 U.S.C. 2000e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization’s effectiveness. It thus helps protect the religious liberties of communities of faith. The CSBG Act’s Charitable Choice provisions expressly preserve a religious organization’s exemption from the religious nondiscrimination provisions of Title VII, 42 U.S.C. 9920(b)(3), and thus reflect the recognition that a religious organization may determine that, in