

order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions. Title 42 U.S.C. 9918(c) prohibits persons from being excluded from participation in CSBG-funded programs or activities or subject to discrimination based on race, color, national origin, sex, age, or disability. We decline to impose additional restrictions by regulation.

*Protection of Beneficiaries (Section 1050.3(e))*

*Comments:* Most comments asked for alternative language that would provide stronger protections for beneficiaries of social services from being exposed to religious ceremonies or practices against their will. They recommended that the language protect such beneficiaries from both “passive” as well as “active” non-voluntary religious participation. Some suggest removing the word “actively” while others suggest adding the word “passively” to the rule. Three comments support the rule as drafted.

*Response:* We have chosen not to accept the change in response to these comments. It was not the intent of Congress to permit religious discrimination in the treatment of beneficiaries, and the CSBG Act charitable choice provisions adequately protect beneficiaries from discrimination. Although the statute does not specifically address this issue, the final rule prohibits discrimination against beneficiaries on the basis of “religion or religious belief.” This phrasing is slightly different from that in the proposed rule, but is substantively similar. In addition, no funds provided directly to religious organizations to provide assistance under any program may be used for sectarian worship, instruction or proselytization, and inherently religious activities must be voluntary for program beneficiaries. These requirements are sufficient to protect the religious freedom of beneficiaries.

*Accounting and Auditing Requirements (Sections 1050.3(f) and (g))*

*Comments:* Several commenters thought the language in the Supplemental Information section of the proposed rule needs to be moved to the rule itself, especially descriptions of what constitutes strong separation of religious from secular social service activities for purposes of auditing, recordkeeping, and reporting. Also, several commenters asked for alternative language that would clearly state that Federal, State and local funding for secular purposes must be

separated and accounted for, and that State and local laws apply in such cases.

*Response:* The language in the rule is clear and provides for adequate accounting and auditing of funds. It also provides for appropriate safeguards for the fiscal accountability of such organizations. Religious organizations are subject to the same statutory and regulatory provisions as other non-governmental organizations to account for Federal funds in accordance with generally accepted accounting principles. For instance, States administering CSBG funds are obligated to conduct reviews of grantees as provided in Section 678B of the CSBG Act. Moreover, each State has an obligation under Section 678D of the Act to establish fiscal control and accounting procedures necessary to assure the proper accounting of funds paid to the State.

Regulations applicable to the CSBG program similarly require that States manage and monitor grant and sub-grant activities supported by the award. 45 CFR 74.51(a). Eligible entities are also required to obtain audits by an independent auditor in accordance with the Single Audit Act and OMB Circular A-133. 45 CFR 74.26(a). Expenditures must conform to the same Federal cost principles that are ordinarily applicable to each award in order to be allowable. 45 CFR 74.27(a).

Moreover we are authorized to conduct site visits as warranted. We may determine that such audits or reviews are warranted based upon any information received by the agency which raises an issue concerning the propriety of expenditures.

Religious organizations are also required to segregate government funds into a separate account, and those funds are subject to audit by the government. While the CSBG Act requires a separate account for government funds we note that non-profit status is not statutorily required in all programs authorized by the CSBG Act (e.g., training and technical assistance awards). We have therefore deleted the definition of religious organization—i.e., “a non-profit organization”—from the regulation. We also made this change for consistency with the CSBG Act which does not define the term.

*Religious Organizations as “Intermediate Organizations” (Section 1050.3(h))*

*Comments:* Several commenters strongly opposed allowing religious organizations receiving government funds for social services to contract with other organizations to provide these services. They questioned the

constitutionality of this subcontracting possibility arguing that it creates a situation in which religious organizations are serving a government responsibility of administration and oversight.

*Response:* The Department believes that faith-based organizations that are designated as “eligible entities” under the CSBG Act are not prohibited from operating in a manner consistent with the rights and responsibilities afforded other community-based organizations under the Act, including the opportunity to contract with other organizations to provide services or carry out other responsibilities of the grant. Religious groups, like any other groups that serve as intermediate organizations, will be subject to generally applicable requirements that ensure the fair and lawful administration of the program.

*Vouchers*

*Comments:* Discussion of the possible use of vouchers in the Supplemental Information section of the proposed rule caused several commenters to contend that the recent Supreme Court decision on educational vouchers would require several conditions not discussed or provided for in the proposed rule: (1) Availability of choice through an alternative service provider that is not a religious organization; and (2) Clear notification to a beneficiary that they had a choice of receiving comparable service in a non-religious organization setting. Comments either suggested that the rule require the availability of alternative service choices, or objected to the fact that by providing funds to religious organizations, a situation was created in which competing services would have to be created at considerable expense, or wanted stronger language regarding notification to beneficiaries that they had a choice of service providers.

*Response:* Mention of vouchers in the Supplemental Information section of the proposed rule was offered as an example of how a potential beneficiary might approach a faith-based organization for services, and was not intended to form the basis for establishing in this rulemaking criteria for social service voucher programs. Further, since vouchers are not currently used in programs funded by the CSBG Act, we anticipate few or no situations in which the issues raised by commenters would apply.

*Regulatory Procedures*

*Comments:* One commenter viewed the proposed rule as a “major regulation,” thereby requiring a