

HUD programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

2. Faith-Based Activities

The proposed rule would describe the requirements applicable to all recipient organizations regarding the use of HUD funds for faith-based activities. Specifically, a participating organization may not use direct HUD funds 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 funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. This requirement ensures that HUD funds provided directly to religious organizations are not used to support inherently religious activities. Thus, HUD funds provided directly 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.

This restriction does not mean that an organization that receives HUD funds cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with direct HUD funds. Thus, faith-based organizations that receive HUD funds must take steps to separate, in time or location, their inherently religious activities from the direct HUD-funded services that they offer.

These restrictions on inherently religious activities do not apply where HUD funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the secular requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using HUD funds under a program that is designed to give that individual a choice among providers.

3. Independence of Faith-Based Organizations

The proposed rule clarifies that a religious organization that participates in HUD programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of

its religious beliefs, provided that it does not use HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HUD-funded religious organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. Nondiscrimination in Providing Assistance

The proposed rule clarifies that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

5. Structures Used for Religious Activities

The proposed rule would also clarify that HUD funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities, such as worship, religious instruction, or prayer. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. Assurance Requirements

The proposed rule would remove those provisions of HUD's regulations that require only HUD-funded religious organizations to provide assurances that they will conduct eligible program activities in a manner that is "free from religious influences." HUD imposes no comparable assurance requirements in any other context, and HUD believes it is unfair to require religious

organizations alone to provide additional assurances, above and beyond those any other organization is required to provide, that they will comply with HUD requirements. All organizations that participate in HUD programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that provisions of HUD's regulations disqualify religious organizations from participating in HUD's programs merely because they are motivated or influenced by religious faith to provide social services, the proposed rule removes that restriction, which is inconsistent with governing law.

7. Inapplicability of Executive Order 11246

The proposed rule would also amend the CDBG regulations to provide that Executive Order 11246, regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60 do not apply to CDBG grantees. By its own terms, the Executive Order applies to government contractors and subcontractors, not grantees.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.