

DEPARTMENT OF JUSTICE**28 CFR Parts 31, 33, 38, 90, 91, and 93****[Docket No. OAG 106; AG Order No. 2687–2003]****RIN 1105–AA83****Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants****AGENCY:** Office of the Attorney General, Justice.**ACTION:** Proposed rule.

SUMMARY: This rule proposes to implement executive branch policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for the Department's funding. This proposed rule would revise Department regulations pertaining to certain programs to bring them into compliance with this policy and to ensure that these programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

DATES: Comments must be submitted by December 1, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Task Force for Faith-Based and Community Initiatives, Office of the Deputy Attorney General, Room 4413, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 8:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Purtill, Director, Task Force for Faith-Based and Community Initiatives, Department of Justice, Room 4409, 950 Pennsylvania Avenue, NW., Washington, DC 20530; telephone: (202) 305–8283 (this is not a toll-free number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For program-specific information, contact the following offices: Office of Justice Programs—Bureau of Justice Assistance, (202) 307–0635; Office of Juvenile Justice Delinquency Prevention, (202) 307–

5924; National Institute of Justice, (202) 307–2942; Drug Court Programs Office, (202) 616–5001; Office of Victims of Crime, (202) 514–4696; Office of Violence Against Women, (202) 307–6026; Executive Office for Weed and Seed, (202) 616–1152; Bureau of Prisons, 202–307–3198; National Institute of Corrections, (202) 307–3106; Community Oriented Policing Services (COPS), (202) 307–1480 (these are not toll-free numbers). Hearing or speech-impaired individuals may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:**I. Background**

Religious organizations, including religiously affiliated organizations, are an important part of the social services network of the United States, offering a multitude of social services to those in need. In addition to places of worship, religious organizations include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Religious groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, help to reduce crime, addiction, and delinquency, and help to strengthen families and rebuild communities.

All too often, however, Federal policy and programs have not recognized religious groups as resources for providing social assistance. Federal, state, and local governments have often imposed barriers to the participation of religious organizations in social service programs, including unwarranted regulatory barriers.

President Bush has directed the federal agencies, including the Justice Department, to take steps to ensure that federal policy and programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. The Administration believes that religiously affiliated, or faith-based, groups possess an under-appreciated ability to meet the needs of disadvantaged Americans, including those within the criminal justice system, and to revitalize distressed neighborhoods. The Administration believes that there should be an equal opportunity for *all* organizations—both religious and nonreligious—to participate as partners in federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order, which was

published in the **Federal Register** on January 31, 2001 (66 FR 8499), created Centers for Faith-Based and Community Initiatives in five cabinet departments—HUD, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the equal participation of faith-based and community organizations in the provision of social services by their Departments. On December 12, 2002, President Bush issued Executive Order 13280. That Order, published in the **Federal Register** on December 16, 2002 (66 FR 77145), created Centers in two additional agencies—the United States Agency for International Development and the Department of Agriculture—and charged those Centers with duties similar to those set forth in Executive Order 13198. On December 12, 2002, President Bush also issued Executive Order 13279, published in the **Federal Register** on December 12, 2002 (67 FR 77141). That Executive Order charges executive branch agencies to give equal treatment to faith-based and community groups that apply for funds to meet social needs in America's communities. President Bush called for an end to discrimination against faith-based organizations and, consistent with the First Amendment to the United States Constitution, ordered implementation of these policies throughout the executive branch, including, among other things, allowing organizations to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government-funded programs. President Bush directed each executive branch agency, including the Department of Justice, to implement these policies. This proposed rule is part of the Department's efforts to fulfill its responsibilities under these Executive Orders.

II. This Proposed Rule**A. Purpose of Proposed Rule**

Consistent with the President's initiative, this proposed rule would revise the Department's regulations to remove unwarranted barriers to the equal participation of faith-based organizations in the Department's programs. The objective of this proposed rule is to ensure that the Department's programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to

which funds may be put, and the conditions for receipt of funding. In addition, this proposed rule is designed to ensure that the implementation of the Department's programs is conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

B. Justice Department Program Regulations Amended by Proposed Rule

This rule proposes to amend the regulations for the following Justice Department components or offices:

1. Office of Justice Programs (OJP)
2. Bureau of Prisons (BOP)
3. National Institute of Corrections (NIC)
4. Community Oriented Policing Services (COPS)
5. Office for Violence Against Women (OVW)
6. United States Marshals Service
7. Asset Forfeiture and Money Laundering Section of the Criminal Division
8. Civil Rights Division

C. Proposed Regulatory Amendments

This rule proposes to make the following regulations applicable to all discretionary grant, formula grant, contract, and cooperative agreement programs listed above.

1. *Participation by faith-based organizations in Justice Department programs.* The proposed rule would make clear that organizations are eligible to participate in Department programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for Department funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, as well as state and local governments administering funds under Department programs, are prohibited from discriminating against organizations on the basis of religion, religious belief, or religious character in the administration or distribution of Federal financial assistance under social service programs, including grants, contracts, and cooperative agreements.

2. *Inherently religious activities.* The proposed rule describes the requirements applicable to all recipient organizations regarding the use of Department funds for inherently religious activities. Specifically, a participating organization may not use

direct financial assistance¹ from the Department 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 direct Department assistance, and participation must be voluntary for the beneficiaries of the Department-funded programs or services. This requirement ensures that direct financial assistance from the Department to religious organizations is not used to support inherently religious activities. Such assistance 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 Department funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct financial assistance from the Department. Thus, faith-based organizations that receive direct financial assistance from the Department must take steps to separate, in time or location, their inherently religious activities from the direct Department-funded services that they offer.

These restrictions on inherently religious activities do not apply where Department 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 beneficiary using Department funds under a program that is designed to give that beneficiary a choice among providers.

Correctional institutions are heavily regulated, and the degree of government control over correctional environments

¹ The term "direct financial assistance" is used here to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same responsibilities as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct financial assistance" may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). Again, in these proposed regulations, the term "direct financial assistance" has the former meaning.

means that prison officials must sometimes take affirmative steps, in the form of chaplaincies and similar programs, to introduce religion into the environment. Without such efforts to make religious accommodations, religious freedom would not exist for federal prisoners. Accordingly, the proposed rule recognizes that the legal restrictions applied to religious programs within correctional facilities will sometimes be different from the legal restrictions that are applied to other Department programs.

3. *Independence of faith-based organizations.* The proposed rule clarifies that a religious organization that participates in Department 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 direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide Department-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Department-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself 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 receives direct financial assistance from the Department 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 directly funded in whole or in part by the Department, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Assurance requirements.* This rule proposes to direct the removal of those provisions of the Department's agreements, covenants, memoranda of understanding, policies, or regulations that require only Department-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities. The Department imposes no comparable assurance requirements in any other context, and the Department 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 Department requirements. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. In addition, to the extent that provisions of the Department's agreements, covenants, policies, or regulations disqualify religious organizations from participating in the Department's programs because they are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, the proposed rule removes that restriction, which is inconsistent with governing law.

III. Findings and Certifications

Executive Order 12866—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) and, accordingly, has reviewed the rule. 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 Task Force for Faith-based and Community Initiatives, Room 4409, 950 Pennsylvania Ave., NW., Washington, DC 20530.

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 on 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 the Unfunded Mandates Reform Act of 1995.

Executive Order 13132—Federalism

Executive Order 13132, *Federalism*, prohibits an agency from publishing any rule that has federalism implications if

the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Consistent with Executive Order 13132, the Department specifically solicits comments from state and local government officials on this proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Department regulations at 28 CFR part 61, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 8:30 a.m. and 5:30 p.m. weekdays in the Task Force for Faith-based and Community Initiatives, Office of the Deputy Attorney General, Room 4413, Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to Department grantees. Rather, the purpose of the proposed rule is to remove policy prohibitions that currently restrict the equal participation of religious or religiously affiliated organizations (large and small) in the Department's programs. Notwithstanding the Department's determination that this rule will not have a significant economic effect on a substantial number of small entities, the Department specifically invites comments regarding any less burdensome alternatives to this rule that will meet the Department's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for the programs affected by this rule are 16.579, 16.592, 16.593, 16.523, 16.540, 16.548, 16.549, 16.575, 16.588, 16.580, 16.613, 16.202, 16.585, 16.595, 16.560, 16.563, 16.541, 16.542, 16.728, 16.729, 16.730, 16.731, 16.732, 16.543, 16.544, 16.547, 16.726, 16.547, 16.582, 16.583,

16.524, 16.525, 16.587, 16.589, 16.602, 16.005, 16.108, 16.320, 16.526, 16.710, 16.110.

List of Subjects

28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

28 CFR Part 33

Administrative practice and procedure, Grants.

28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements, Nonprofit organizations.

28 CFR Part 90

Grant programs, Judicial administration—violence against women.

28 CFR Part 91

Grant Programs—correctional facilities.

28 CFR Part 93

Grant programs, Judicial administration.

For the reasons stated in the preamble, the Department proposes to amend chapter I of Title 28 of the Code of Federal Regulations as follows:

PART 31—OJJDP GRANT PROGRAMS

1. The authority citation for part 31 is revised to read as follows:

Authority: 42 U.S.C 5601 through 5785; Pub. L. 108–7, 117 Stat. 11; 5 U.S.C. 301.

2. Add § 31.404 to subpart A to read as follows:

§ 31.404 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

3. In § 31.502, add paragraph (a)(3) to read as follows:

§ 31.502 Assurances and plan information.

(a) * * *

(3) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

* * * * *

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

4. The authority section for part 33 is revised to read as follows:

Authority: 42 U.S.C. 3701 through 3797y-4; 5 U.S.C. 301.

5. In support A under the heading Additional Requirements, add § 33.53 to read as follows:

§ 33.53 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

6. Add part 38 to read as follows:

PART 38—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.

38.1 Discretionary grants, contracts, and cooperative agreements.

38.2 Formula grants.

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; 18 U.S.C. 4001, 4042, 5040; 20 U.S.C. 1152; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107-273, 116 Stat. 1758 (42 U.S.C. 3751, 3753, 3762b, 3782, 3796dd-1, 3796dd-7, 3796gg-1, 3796gg-0b, 3796gg-3, 3796h, 3796ii-2, 3797u-3, 3797w, 5611, 5672, 10604, 14071).

§ 38.1 Discretionary grants, contracts, and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. No State or Local government receiving funds under any Department program shall discriminate against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to a grant, contract, or cooperative agreement funded by a discretionary grant from the Department. As used in this section, the term "grantee" includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.

(b) (1) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(2) The restrictions on inherently religious activities set forth in paragraph

(b)(1) of this section do not apply to programs where Department funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where Department funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it 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.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. No grant

document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) Exemption from Title VII Employment Discrimination Requirements.

A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives direct or indirect financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(g) In general, the Department does not require that a grantee, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(i) Effect on State and local funds. If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(h) To the extent otherwise permitted by federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department 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 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, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

§ 38.2 Formula grants.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. No state or local government receiving funds under any Department program shall discriminate against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to a grant, contract, or cooperative agreement funded by a formula or block grant from the Department. As used in this section, the term "grantee" includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.

(b) (1) Organizations that receive direct financial assistance from the Department may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(2) The restrictions on inherently religious activities set forth in paragraph (b)(1) of this section do not apply to programs where Department funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where Department funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it 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.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering

financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) *Exemption from Title VII Employment Discrimination Requirements.* A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the religious organization receives direct or indirect financial assistance from Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(g) In general, the Department does not require that a grantee, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate

Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(h) Effect on State and local funds. If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the federal funds.

(i) To the extent otherwise permitted by federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department 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 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, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

PART 90—VIOLENCE AGAINST WOMEN

7. The authority citation for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711–3796gg–7; Sec. 826, Part E, Title VIII, Pub. L. 105–244, 112 Stat. 1581, 1815.

8. Add § 90.3 to subpart A to read as follows:

§ 90.3 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

9. The authority citation for part 91 is revised to read as follows:

Authority: 42 U.S.C. 13701 through 14223.

10. In § 91.3, add paragraph (g) to read as follows:

§ 91.3 General eligibility requirements.

* * * * *

(g) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

11. In § 91.23, add paragraph (d) to read as follows:

§ 91.23 Grant authority.

* * * * *

(d) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

PART 93—PROVISIONS IMPLEMENTING THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

12. The authority citation for part 93 is added to read as follows:

Authority: 42 U.S.C. 3797u through 3797y–4.

13. In § 93.4, add paragraph (c) to read as follows:

* * * * *

§ 93.4 Grant authority.

(c) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

Dated: September 17, 2003.

John Ashcroft,

Attorney General.

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