

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 667****20 CFR Part 670****Office of the Secretary****29 CFR Part 2****29 CFR Part 37****RIN 1290-AA21****Equal Treatment in Department of
Labor Programs for Faith-Based and
Community Organizations; Protection
of Religious Liberty of Department of
Labor Social Service Providers and
Beneficiaries**

AGENCY: Employment and Training Administration and the Office of the Secretary, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The United States Department of Labor (DOL or the Department) is proposing to revise its general regulations. This proposed rule would clarify, within the framework of constitutional guidelines, that faith-based and community organizations are able to participate in DOL social service programs without regard to their religious character or affiliation, and are able to apply for and compete on an equal footing with other eligible organizations to receive DOL support. In addition, in order to consolidate in one place the Department's regulations on religious activities, this proposed rule would revise both the Employment and Training Administration (ETA) regulation on religious services at Job Corps centers and the Workforce Investment Act of 1998 (WIA) regulations relating to the use of WIA Title I financial assistance to support employment and training in religious activities. DOL supports the participation of faith-based and community organizations in its programs.

DATES: Comments must be submitted by May 10, 2004.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1290-AA21, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: Comments may be submitted by e-mail to GRNDR@dol.gov.

Include RIN 1290-AA21 in the subject line of the message.

- Fax: As a convenience to commenters, comments of five pages or less may be submitted by facsimile ("FAX") machine to (202) 693-6146, which is not a toll-free number.

- Mail: Brent Orrell, Director, Center for Faith-Based and Community Initiatives (CFBCI), U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave., NW., Room S-2235, Washington, DC 20210.

Instructions: All submissions received must include the Regulatory Information Number (RIN) 1290-AA21 for this rulemaking. Receipt of submissions, whether by U.S. mail, FAX transmittal, or e-mail, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early, or to transmit them electronically through the Agency Web site or by FAX or e-mail.

Comments will be available for public inspection during normal business hours at the CFBCI office, at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule will be made available in the following formats: large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain the Proposed Rule in an alternate format, contact CBFCI at (202) 693-6450.

FOR FURTHER INFORMATION CONTACT: On the proposed revisions to the Office of the Secretary's general regulations, 29 CFR part 2, contact: Rhett Butler, Associate Director for Policy Development, CFBCI, (202) 693-6450. On the proposed revisions to 20 CFR part 667, contact Maria K. Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, (202) 693-3700. On the proposed revisions to 20 CFR 670.555, contact: Richard Trigg, Administrator of the National Office of Job Corps, (202) 693-3000. On the proposed revisions to 29 CFR 37.6, contact Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693-6500. Please note these are not toll-free numbers. Individuals with hearing or speech impairments 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**

Faith-based (or "religious") and community organizations are an important part of the social services network of the United States, offering a multitude of social services to those in need. Faith-based and community groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, and help to strengthen families and rebuild communities. All too often, however, Federal policies and programs have not recognized faith-based and community organizations as resources for providing social assistance. Federal, State and local governments have often imposed barriers to the participation of faith-based and community organizations in social service programs, including unwarranted regulatory barriers. President Bush has directed Federal agencies, including DOL, to take steps to ensure that Federal policies and programs are fully open to faith-based and community organizations 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 and to help them enter, succeed, and thrive in the workforce. The Administration believes that there should be an equal opportunity for *all* organizations—both faith-based and otherwise—to participate 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 8497), created Centers for Faith-Based and Community Initiatives in five cabinet departments—Labor, Education, Health and Human Services, Housing and Urban Development, and Justice. Executive Order 13198 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 (67 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 16, 2002 (67 FR 77141). Executive Order 13279 charges executive branch agencies to give equal treatment to faith-based and community organizations that apply to the Government for Federal financial assistance to meet social needs in America's communities. President Bush called for an end to discrimination against faith-based and community 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 programs supported with Federal financial assistance. President Bush directed each executive agency, including DOL, to implement these policies. This proposed rule is part of DOL's efforts to fulfill its responsibilities under both Executive Orders 13198 and 13279.

II. Proposed Rule

A. Purpose of the Proposed Rule

Consistent with the President's initiative, this proposed rule would revise DOL's general regulations to make clear that faith-based and community organizations may participate in DOL social service programs, including as recipients of Federal financial assistance. The objective of this proposed rule is to ensure that DOL-supported social service programs are open to all qualified organizations, regardless of their religious character. This rule also aims to set forth the conditions for seeking or receiving DOL support related to these programs and the permissible uses to which such support may be put. In addition, this proposed rule is designed to ensure that DOL's social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

B. Proposed Amendments to DOL General Regulations

DOL proposes to amend its General Regulations at 29 CFR part 2 by incorporating a new Subpart D—Equal Treatment in DOL Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of DOL Social Service Providers and

Beneficiaries—to address the areas identified below.

1. Participation by Faith-Based and Community Organizations in DOL Social Service Programs

The proposed rule clarifies in § 2.32 that organizations are eligible to participate in DOL social service programs without regard to the religious character or affiliation of such organizations, and that eligible organizations may not be excluded from the competition for DOL support related to DOL social service programs simply because such organizations are faith-based. Specifically, faith-based organizations are eligible to compete for such support on the same basis, and under the same eligibility requirements, as all other non-governmental organizations. DOL, DOL social service intermediary providers, and State and local governments administering DOL support are prohibited from discriminating for or against organizations on the basis of the organizations' religious character or affiliation. This rule does not, however, preclude DOL programs from accommodating religious organizations in a manner consistent with the Establishment Clause. Of course, all DOL programs must be implemented in a manner consistent with the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment to the Constitution, as well as with other applicable constitutional provisions.

2. Inherently Religious Activities

The proposed rule describes in § 2.33 the requirements related to inherently religious activities in DOL-supported social service programs. Specifically, as described in § 2.33(b), an organization may not use direct DOL support¹ for 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 social service programs receiving direct DOL support, and participation in any such inherently religious activities must be voluntary for the beneficiaries of such programs. This requirement ensures that DOL support

provided directly to a faith-based organization is not used for inherently religious activities. Thus, direct DOL support may not be used, for example, to conduct prayer meetings, worship services, or any other activity that is inherently religious.

This restriction does not mean that a DOL social service provider cannot engage in inherently religious activities. Such activities are permissible, but DOL social service providers that receive DOL support directly must take steps to separate, in time or location, their inherently religious activities from services that they offer with direct DOL support.

These restrictions on inherently religious activities do not apply, as explained in § 2.33(c), where DOL support is provided indirectly to organizations. Indirect DOL support refers to DOL support that is indirect within the meaning of the Establishment Clause of the First Amendment to the Constitution. An organization may receive such indirect DOL support if, for example, a program beneficiary redeems a voucher, coupon, certificate, or similar mechanism that was provided to that individual using DOL financial assistance under a program that is designed to give that individual a genuine and independent private choice among providers or program options. See *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). Vouchers might be provided, for example, as part of an Individual Training Account (ITA) under the Workforce Investment Act (WIA). Accordingly, if a WIA program beneficiary chose to redeem an ITA voucher at a seminary that had qualified as an eligible training provider, this proposed rule would not prohibit the seminary from using such indirect financial assistance to offer a program that integrated faith into its training program.

Correctional institutions are heavily regulated, and the degree of government control over correctional environments 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. See *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972) (explaining that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty"); *Abington School District v. Schempp*, 374 U.S. 203, 299 (1963) (Brennan, J., concurring) (observing that "hostility, not neutrality,

¹ As used in this proposed rule, the term "direct DOL support" refers to DOL support provided directly to a religious or other non-governmental organization within the meaning of the Establishment Clause of the First Amendment. For example, direct DOL support may occur where the Federal Government, a State or local government administering DOL support, or a DOL social service intermediary provider selects an organization and obtains the needed services straight from the organization (e.g., via a grant or cooperative agreement).

would characterize the refusal to provide chaplains and places of worship to prisoners * * * cut off by the State from all civilian opportunities for public communion"). Accordingly, the proposed rule at § 2.33(b)(3) recognizes that the legal restrictions applied to religious activities in DOL social service programs that may be implemented in correctional facilities may sometimes be different from the legal restrictions that are applied to other DOL-supported social service programs.

In addition, as addressed in § 2.33(b)(3), the legal restrictions that apply to religious activities within some DOL-supported social service programs, e.g. isolated residential Job Corps facilities, may sometimes be different from legal restrictions that are applied to other DOL programs. This is because where there is extensive government control over the environment of a DOL-supported social service program, program officials may sometimes need to take affirmative steps, in the form of access to ministers and similar programs, to provide an opportunity for beneficiaries in such DOL programs to exercise their religion. *Cf. Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985) (finding it "readily apparent" that the Government is obligated by the First Amendment to make religion available to members of the Army who otherwise would not have access to their religion because they are often in isolated areas without access to religious opportunities). Without such efforts, religious freedom might not exist for these DOL program beneficiaries. Of course, religious activities must be voluntary for all beneficiaries of DOL programs.

Finally, as referenced in § 2.33(b)(2), nothing in this regulation is intended to restrict the exercise of rights or duties guaranteed by the Constitution. For example, program officials must not impermissibly restrict program beneficiaries' ability to freely express their views and to exercise their right to religious freedom. Additionally, subject to reasonable time, place and manner restrictions, residential facilities receiving DOL support must permit residents opportunities to engage in voluntary religious activities, including holding religious services, at these facilities.

3. Independence of Faith-Based and Community Organizations

The proposed rule clarifies in § 2.32(b) that a faith-based or community organization that is a DOL social service provider or participates in DOL social service programs retains its independence and may continue to

carry out its mission, including the definition, development, practice, and expressions of its religious beliefs. Such an organization, however, must not use direct DOL support for any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based or community organization that is a DOL social service provider or participates in DOL social service programs may use space in its facilities to provide social services, without removing religious art, icons, scriptures, or other religious symbols. In addition, such a faith-based or community organization may retain religious terms in the 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 DOL-Supported Social Service Programs

The proposed rule clarifies in § 2.33(a) that DOL, DOL social service intermediary providers, DOL social service providers in their use of direct DOL support, and State and local governments, must not, in providing social services (including outreach for such services), discriminate for or against a current or prospective program beneficiary on the basis of religion or religious belief.

The proposed rule would not prohibit organizations receiving DOL support indirectly (for example, organizations receiving DOL support as the result of the genuine and independent private choice of a beneficiary of a program offering choice among providers or program options) from offering assistance that integrates faith and social services and requiring participation in all aspects of the organizations' programs and activities, including the religious aspects. In such programs, voluntariness is ensured by the provision of genuine choice by the beneficiary, consistent with constitutional requirements. However, as noted in Section II.B.8 of this preamble, the proposed rule would have no effect on existing statutes. Thus, to the extent that such statutes restrict the activities of organizations receiving indirect DOL support, such restrictions remain in effect. Accordingly, the statute that applies to each program should be reviewed for the scope of its applicability, along with any regulations that implement specific provisions of the statute.

5. Assurance Requirements

This rule proposes in § 2.32(c) to direct the removal and prohibit the

institution of any provision in agreements, covenants, memoranda of understanding, policies, or regulations used by DOL, or by a DOL social service intermediary provider or a State or local government administering DOL support, that requires only faith-based organizations receiving DOL support to provide assurances that they will not use such support for inherently religious activities. It is unfair to require faith-based organizations alone to provide additional assurances that other organizations are not required to provide. All DOL social service providers, as well as State and local governments administering DOL support, must carry out DOL-supported activities in accordance with all program requirements and other applicable requirements governing the conduct of DOL-supported activities, including those requirements prohibiting the use of direct DOL support for inherently religious activities. In addition, to the extent that provisions in agreements, covenants, memoranda of understanding, policies, or regulations used by DOL, or by a DOL social service intermediary provider or a State or local government administering DOL support, disqualify faith-based and community organizations from participating in DOL's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of the organizations' religious character or affiliation, the proposed rule would remove such restrictions, which are inconsistent with governing law.

6. Definitions

The proposed definitions included in § 2.31 of subpart D for "Federal financial assistance" and "social service program" were based on the definitions of the same terms in Executive Order 13279. The definitions of the terms "DOL-supported social service program," "DOL social service program," "DOL program," "DOL social service provider," "DOL social service intermediary provider" and "DOL support" were developed to make the rule more reader-friendly.

7. Application to State and Local Funds

The proposed rule clarifies in § 2.34 that if a State or local government contributes its own funds (voluntarily or in accordance with a matching funds program) to supplement Federal funds received to support DOL social service programs, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the proposed

rule would apply to both the Federal and the State or local funds.

8. Effect on Title VII Employment Nondiscrimination Requirements and on Other Existing Statutes

The proposed rule clarifies in § 2.35 that the receipt of DOL support does not cause a religious organization to forfeit its exemption from Title VII of the Civil Rights Act of 1964's prohibitions on employment discrimination on the basis of religion. In addition, the proposed rule does not alter the effect of other statutes, including those that include requirements that recipients of certain types of DOL support refrain from discriminating on the basis of religion. *See, e.g.,* section 188(a)(2) of the Workforce Investment Act of 1998, 29 U.S.C. 2938(a)(2).

9. Status of Nonprofit Organizations

The proposed rule also establishes in § 2.36 certain alternative mechanisms by which organizations can prove they are nonprofit, which is sometimes an eligibility requirement for receiving DOL support. The availability of these alternative mechanisms will reduce the administrative burden required to prove nonprofit status and make it easier to prove eligibility when seeking DOL support, thereby allowing more organizations with limited resources to qualify for DOL support where nonprofit status is a requirement. Because many faith-based and community organizations have limited resources, the addition of these alternate mechanisms is consistent with the President's policy of enlarging eligibility for social services provision to include a broader spectrum of providers, including faith-based and community organizations. However, such alternative mechanisms would not apply where a statute requires a specific method for establishing nonprofit status.

C. Proposed Amendments to Job Corps and WIA Regulations

Consistent with the Administration's policy regarding the participation of faith-based organizations in the Government's social service programs as reflected in Executive Orders 13198 and 13279, and in order to consolidate the Department's regulations regarding religious activities and the participation of faith-based organizations and equal treatment of such organizations, this proposed rule includes changes to the Job Corps regulation on religious services found at 20 CFR 670.555 and to the WIA regulations on religious activities found at 29 CFR 37.6, and at 20 CFR 667.266 and 667.275, relating to the use of WIA Title I financial

assistance to support employment or training in otherwise eligible religious activities.

1. Job Corps

With regard to the Job Corps regulation, the Department proposes to delete paragraphs (b) and (c) of 20 CFR 670.555. Currently paragraph (b) states that religious services may not be held on the premises of a Job Corps center unless the center is so isolated that transportation to and from community religious facilities is impracticable. Paragraph (c) provides that if religious services are held on center, no Federal funds may be paid to those who conduct such services, services may not be confined to one denomination, and centers may not require students to attend services. The standards for conducting religious activities at Job Corps centers would now instead be addressed by 29 CFR part 2, subpart D as set forth in this NPRM. Accordingly, the Department proposes to delete paragraphs (b) and (c), redesignate existing paragraph (d) as paragraph (b), and insert a new paragraph (c) that would cross reference 29 CFR part 2, subpart D.

2. WIA

With regard to the WIA regulations, the Department proposes to delete paragraph (1) of 29 CFR 37.6(f). Currently, paragraph (1) bars recipients of WIA Title I financial assistance from permitting "participants" "to be employed or trained in sectarian activities." (WIA "participants" are defined at 29 CFR 37.4 to be individuals who have been determined to be eligible to participate in, and who are receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA.) This broad prohibition is inconsistent with current law, which permits the use of Federal financial assistance to provide religious training if the assistance is provided indirectly within the meaning of the Establishment Clause of the First Amendment to the Constitution and the providers of training otherwise satisfy the requirements of the program (as discussed in Section II.B.2 of this preamble). The conditions under which WIA Title I financial assistance may be used for religious employment and training would now instead be addressed by 29 CFR part 2, subpart D, as set forth in this NPRM. Accordingly, the Department proposes to revise paragraph (1) by deleting the existing language and inserting new language that would cross reference 29 CFR part 2, subpart D, as set forth in this NPRM.

For the same reasons, the Department also proposes to revise paragraph (b)(1) of 20 CFR part 667.266. Currently, this paragraph refers to and summarizes the restrictions set forth in paragraph (1) of 29 CFR 37.6(f). The Department proposes to revise paragraph (b)(1) by deleting the existing language and inserting new language that would cross reference 29 CFR part 2, subpart D, as set forth in this NPRM.

The Department also proposes to revise paragraph (b) of 20 CFR part 667.275. Like 20 CFR 667.266(b)(1), this paragraph currently refers to and summarizes the restrictions on employment and training in otherwise eligible religious activities that are set forth in 29 CFR 37.6(f)(1). Therefore, the first sentence of the proposed revision of this paragraph would parallel the proposed language for 20 CFR 667.266(b)(1), discussed above.

In addition, the existing language of 20 CFR 667.275(b) summarizes the restrictions set forth in 29 CFR 37.6(f)(2) regarding the employment of WIA participants to carry out the construction, operation, or maintenance of religious facilities. To be consistent with the revisions to 20 CFR part 667 described in the preceding paragraphs of this preamble, the second sentence of the proposed revisions to 20 CFR part 667 would simply cross-reference 29 CFR 37.6(f)(2), and the existing language of 20 CFR 667.275(b) would be deleted.

Finally, the Department proposes to amend 20 CFR 667.266(b)(2). In discussing the limitations imposed by section 188(a)(3) regarding the employment of WIA participants to carry out the construction, operation, or maintenance of religious facilities, the current language of the paragraph refers incorrectly to 29 CFR 37.6(f)(1). The correct reference is to 29 CFR 37.6(f)(2), as described above. For consistency, the proposed revision of this paragraph is identical to the language in the proposed revision of 20 CFR 667.275(b) regarding the same issue.

III. Regulatory Procedures

Executive Order 12866

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). The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*.

Regulatory Flexibility Act

The Department has notified the Chief Counsel for Advocacy, Small Business

Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed 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 recipients of DOL support. Rather, the purpose of the proposed rule is to clarify that DOL's social service programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the permissible uses to which DOL support may be put. Notwithstanding the Secretary's determination that this rule will not have a significant economic effect on a substantial number of small entities, DOL specifically invites comments regarding any less burdensome alternatives to this rule that will meet DOL's objectives as described in this preamble.

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.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

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, DOL specifically solicits comments from State and local government officials on this proposed rule.

List of Subjects

20 CFR Part 667

Employment; Grant programs—labor; Reporting and recordkeeping requirements.

20 CFR Part 670

Employment; Grant programs—labor; Job Corps; Religious discrimination.

29 CFR Part 2

Administrative practice and procedure; Claims; Courts; Government employees; Religious discrimination.

29 CFR Part 37

Administrative practice and procedure; Aged; Aliens; Civil rights; Discrimination; Equal educational opportunity; Equal employment opportunity; Grant programs—labor; Individuals with disabilities; Investigations; Manpower training programs; Political affiliation discrimination; Religious discrimination; Reporting and recordkeeping requirements; Sex discrimination.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 667; 20 CFR part 670; 29 CFR part 2; and 29 CFR part 37 as set forth below.

Signed at Washington, DC, this 3rd day of March 2004.

Elaine L. Chao,

Secretary of Labor.

Emily S. DeRocco,

Assistant Secretary for Employment and Training.

Title 20—Employees' Benefits

Chapter V—Employment and Training Administration, Department of Labor

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 667 is revised to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

2. In § 667.266, paragraph (b) is revised to read as follows:

§ 667.266 What are the limitations related to religious activities?

* * * * *

(b)(1) The circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities are described in 29 CFR part 2, subpart D, which also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries.

(2) Limitations on the use of WIA Title I financial assistance for the maintenance of facilities used for religious instruction or worship are described in the WIA nondiscrimination regulations at 29 CFR 37.6(f)(2).

3. In § 667.275, paragraph (b) is revised to read as follows:

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

* * * * *

(b) The circumstances under which recipients may use DOL support, including WIA Title I financial assistance, to employ or train participants in religious activities are described in 29 CFR part 2, subpart D, which also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries. Limitations on the use of WIA Title I financial assistance for the maintenance of facilities used for religious instruction or worship are described in the WIA nondiscrimination regulations at 29 CFR 37.6(f)(2). *See* section 188(a)(3) of the Workforce Investment Act of 1998, 29 U.S.C. 2938(a)(3).

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

4. The authority citation for part 670 is revised to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 2881 *et seq.* and 9276(c)); 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

5. Section 670.555 is amended by removing paragraph (b), redesignating paragraph (d) as paragraph (b), and revising paragraph (c) to read as follows:

§ 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

* * * * *

(c) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. *See also* §§ 667.266 and 667.275 of 20 CFR; 29 CFR part 37.

Title 29—Labor**Chapter I—Office of the Secretary of Labor****PART 2—GENERAL REGULATIONS**

7. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

8. Part 2 is amended by adding a new subpart D to read as follows:

PART 2—GENERAL REGULATIONS

* * * * *

Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

- 2.30 Purpose.
- 2.31 Definitions.
- 2.32 Equal participation of religious organizations.
- 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.
- 2.34 Application to State and local funds.
- 2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.
- 2.36 Status of nonprofit organizations.

§ 2.30 Purpose.

The purpose of the regulations in this subpart is to ensure that DOL-supported social service programs are open to all qualified organizations, regardless of the organizations' religious character, and to establish clearly the permissible uses to which DOL support for social service programs may be put, and the conditions for receipt of such support. In addition, this proposed rule is designed to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

§ 2.31 Definitions.

As used in the regulations in this subpart:

(a) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction or exemption.

(b) The term *social service program* means a program that is administered or supported by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

- (1) Child care services and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
- (2) Job training and related services, and employment services;
- (3) Information, referral, and counseling services;
- (4) Literacy and mentoring programs; and
- (5) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of domestic violence.

(c) The term *DOL* means the U.S. Department of Labor.

(d) The term *DOL-supported social service program*, *DOL social service program*, or *DOL program* means a social service program, as defined in paragraph (b) of this section, that is administered by or for DOL with DOL support. Such programs include, but are not limited to, the One Stop Career Center System, the Job Corps, and other programs supported through the Workforce Investment Act.

(e) The term *DOL social service provider* means any non-Federal organization, other than a State or local government, that seeks or receives DOL support as defined in paragraph (g) of this section, or participates in DOL programs other than as the ultimate beneficiary of such programs.

(f) The term "DOL social service intermediary provider" means any DOL social service provider that, as part of its duties, selects subgrantees to receive DOL support or subcontractors to provide DOL-supported services, or has the same duties under this part as a governmental entity.

(g) The term *DOL support* means Federal financial assistance, as well as procurement funding provided to a non-Federal organization, including a State or local government, to support the organization's administration of or participation in a DOL social service

program as defined in paragraph (d) of this section.

§ 2.32 Equal participation of religious organizations.

(a) Religious organizations must be eligible, on the same basis as any other organization, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL, DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation, although this requirement does not preclude DOL, DOL social service providers, or State and local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause. In addition, DOL, DOL social service intermediary providers, and State and local governments administering DOL support must continue to comply with otherwise applicable constitutional principles, including, among others, those articulated in the Establishment, Free Speech, and Free Exercise Clauses of the First Amendment to the Constitution.

(b) A religious organization that is a DOL social service provider retains its independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, subject to the provisions of § 2.33 of this subpart. Among other things, such a religious organization must be permitted to:

- (1) Use its facilities to provide DOL-supported social services without removing or altering religious art, icons, scriptures, or other religious symbols from those facilities; and
- (2) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on a religious basis, and including religious references in its mission statements and other governing documents.

(c) A grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require only religious organizations to provide assurances that they will not use direct DOL support for inherently religious activities. Any such requirements must apply equally to both religious and other organizations. All organizations, including religious ones,

that are DOL social service providers must carry out DOL-supported activities in accordance with all applicable legal and programmatic requirements, including those prohibiting the use of direct DOL support for inherently religious activities. A grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify religious organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, or on the grounds that such organizations have a religious character or affiliation.

§ 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.

(a) DOL, DOL social service intermediary providers, DOL social service providers in their use of direct DOL support, and State and local governments administering DOL support must not, when providing social services, discriminate for or against a current or prospective program beneficiary on the basis of religion or religious belief. This requirement does not preclude DOL, DOL social service intermediary providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause of the First Amendment to the Constitution.

(b)(1) DOL, DOL social service providers, and State and local governments administering DOL support must ensure that they do not use direct DOL support for inherently religious activities such as worship, religious instruction, or proselytization. DOL social service providers must be permitted to offer inherently religious activities so long as they offer those activities separately in time or location from social services receiving direct DOL support, and participation in the inherently religious activities is voluntary for the beneficiaries of social service programs receiving direct DOL support. For example, participation in an inherently religious activity must not be a condition for participating in a directly-supported social service program.

(2) This regulation is not intended to and does not restrict the exercise of rights or duties guaranteed by the Constitution. For example, program officials must not impermissibly restrict the ability of program beneficiaries or

DOL social service providers to freely express their views and to exercise their right to religious freedom. Additionally, subject to reasonable and permissible time, place and manner restrictions, residential facilities that receive DOL support must permit residents to engage in voluntary religious activities, including holding religious services, at these facilities.

(3) Notwithstanding the requirements of paragraph (b)(1), and to the extent otherwise permitted by Federal law (including constitutional requirements), direct DOL support may be used to support inherently religious activities, and such activities need not be provided separately in time or location from other DOL-supported activities, under the following circumstances:

(i) Where DOL support is provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers through social service programs;

(ii) Where DOL support is provided to social service programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties; or

(iii) Where DOL-supported social service programs involve such a degree of government control over the program environment that religious exercise would be significantly burdened absent affirmative steps by DOL or its social service providers.

(c) To the extent otherwise permitted by Federal law, the restrictions set forth in this section regarding the use of direct DOL support do not apply to social service programs where DOL support is provided to a religious or other non-governmental organization indirectly within the meaning of the Establishment Clause of the First Amendment to the Constitution. Religious or other non-governmental organizations will be considered to have received support indirectly, for example, if as a result of a program beneficiary's genuine and independent choice the beneficiary redeems a voucher, coupon, or certificate that allows the beneficiary to choose the service provider, or some other mechanism is provided to ensure that beneficiaries have a genuine and independent choice among providers or program options. All organizations must, however, satisfy all applicable legal and programmatic requirements.

§ 2.34 Application to State and local funds.

If a State or local government contributes its own funds (voluntarily or in accordance with a matching funds program) 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, then the provisions of this subpart apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal assistance.

§ 2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in § 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 DOL support. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. Accordingly, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program official or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4123, Washington, DC 20210, (202) 693-6500. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

§ 2.36 Status of nonprofit organizations.

(a) In general, DOL does not require that an organization, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code in order to be eligible for Federal financial assistance under DOL social service programs. Many such programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for such support. Individual solicitations that require organizations to have nonprofit status must specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation for a program that requires an organization to maintain tax-exempt status must expressly state the statutory authority for requiring such status. For assistance with questions about a particular solicitation, applicants should contact the DOL program office that issued the solicitation.

(b) Unless otherwise provided by statute, in DOL programs in which an

applicant must show that it is a nonprofit organization, the applicant must be permitted to do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as tax exempt 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 (b)(3) of this section, if that item applies to a State or national parent organization, together with a

statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

9. The authority citation for part 37 is revised to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; Title IX of the Education Amendments of 1972, as amended, 29 U.S.C. 1681; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; and Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

10. In § 37.6, paragraph (f)(1) is revised to read as follows:

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

* * * * *

(f)(1) The circumstances under which recipients may use DOL support, including WIA Title I financial assistance, to employ or train participants in religious activities are described in 29 CFR part 2, subpart D, which also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. *See also* §§ 667.266 and 667.275 of 20 CFR.

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