

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

(i) If a State or local government contributes its own funds in excess of those funds required by a matching or grant agreement to supplement Department-supported activities, the State or local government has the option to segregate those additional funds or commingle them with the Federal award funds. 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. With respect to matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

(j) 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 or through other indirect funding mechanisms, 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 through a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

**PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCRIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW**

Sec.

88.1 Purpose.

88.2 Complaint handling and investigating.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 73 FR 78096, Dec. 19, 2008, unless otherwise noted.

**§ 88.1 Purpose.**

The purpose of this part is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a-7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111-117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279-80, referred to collectively as the "federal health care provider conscience protection statutes."

[76 FR 9976, Feb. 23, 2011]

**§ 88.2 Complaint handling and investigating.**

The Office for Civil Rights (OCR) of the Department of Health and Human Services is designated to receive complaints based on the Federal health care provider conscience protection statutes. OCR will coordinate the handling of complaints with the Departmental funding component(s) from which the entity, to which a complaint has been filed, receives funding.

[76 FR 9976, Feb. 23, 2011]

**PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT**

Sec.

89.1 Applicability and requirements.

89.2 Definitions.

89.3 Organizational integrity of recipients.

AUTHORITY: Section 301(f) of the Leadership Act, Pub. L. 108-25, as amended (22 U.S.C. 7631(f) and 5 U.S.C. 301.

SOURCE: 75 FR 18763, Apr. 13, 2010, unless otherwise noted.

**§ 89.1 Applicability and requirements.**

(a) This regulation applies to all recipients unless they are exempted from the policy requirement by the Leadership Act or other statute.

(b) The Department of Health and Human Services (HHS) components shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that

## § 89.2

they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This requirement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument involving Leadership Act HIV/AIDS funds entered into with the recipient.

### § 89.2 Definitions.

For the purposes of this part:

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Leadership Act* means the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Public Law 108-25, as amended (22 U.S.C. 7601-7682).

*Prostitution* means procuring or providing any commercial sex act.

*Recipients* are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

### § 89.3 Organizational integrity of recipients.

A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children ("restricted activities"). A recipient will be found to have objective integrity and independence from such an organization if:

(a) The affiliated organization receives no transfer of Leadership Act HIV/AIDS funds, and Leadership Act HIV/AIDS funds do not subsidize restricted activities; and

(b) The recipient is, to the extent practicable in the circumstances, separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based

## 45 CFR Subtitle A (10-1-15 Edition)

on the totality of the facts, whether sufficient separation exists. The presence or absence of any one or more factors relating to legal, physical, and financial separation will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(1) Whether the organization is a legally separate entity;

(2) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;

(3) The existence of separate accounting and timekeeping records;

(4) The degree of separation of the recipient's facilities from facilities in which restricted activities occur; and

(5) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

## PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Subpart A—General

Sec.

90.1 What is the purpose of the Age Discrimination Act of 1975?

90.2 What is the purpose of these regulations?

90.3 What programs or activities does the Age Discrimination Act of 1975 cover?

90.4 How are the terms in the regulations defined?

### Subpart B—What is Age Discrimination?

#### STANDARDS FOR DETERMINING DISCRIMINATORY PRACTICES

90.11 Purpose of this subpart.

90.12 Rules against age discrimination.

90.13 Definitions of normal operation and statutory objective.

90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

90.16 Burden of proof.