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Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 92, 570, 572, 574, 576, 582, 583, and 585

[Docket No. FR–4782–F–02]

RIN 2501–AC89

Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations to remove barriers to the participation of faith-based organizations in certain HUD programs. In general, no group of applicants competing for HUD funds should be subject, as a matter of HUD's discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or absence of religious character or affiliation. Applicants for HUD funds and those applicants selected to receive HUD funding should generally be subject to the same requirements. The purpose of the revisions made by this rule is to ensure that faith-based organizations are able to compete on an equal footing with other organizations for HUD funding. This final rule follows publication of a January 6, 2003, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Streeter, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–2404 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For program specific information, contact the following offices in HUD's Office of Community Planning and Development: For the HOME Program and the HOPE for Homeownership of Single Family Homes (HOPE 3) Program, Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, (202) 708–2864; for the Community Development Block Grants Program, Robert Duncan, Office of Block Grant Assistance, (202) 708–3587; and for the remaining programs, John Garrity, Office of Special Needs Assistance Programs, (202) 708–4300. (These numbers are not toll-free numbers.) Hearing- or speech-impaired individuals may access these telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The January 6, 2003, Proposed Rule

On January 6, 2003 (68 FR 648), HUD published a proposed rule to amend certain HUD regulations that imposed (or appeared to impose) unwarranted barriers to the participation of faith-based organizations in HUD programs. HUD recognizes that faith-based organizations are an important part of the social services network of the United States, offering a multitude of social services to those in need. These organizations frequently have the experience that HUD seeks to administer social services to beneficiaries under HUD programs. Consistent with the President's Executive Order 13198 (Agency Responsibilities with Respect to Faith-Based and Community Initiatives), issued January 31, 2001 (66 FR 8497), HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract interest and participation by nonprofit organizations. Executive Order 13198 directed five agencies, including HUD, to undertake this review and to take steps to ensure that Federal policy and programs are fully open to faith-based community groups in a manner that is consistent with the Constitution.

In response to the directive of the President's Executive Order, HUD identified regulations for eight programs administered by HUD's Office of Community Planning and Development that imposed (or appeared to impose) barriers to participation of faith-based organizations in these programs. HUD's proposed rule of January 6, 2003, was designed to eliminate these barriers and to ensure that these HUD programs are open to all qualified organizations, regardless of their religious character. The January 6, 2003, rule proposed to amend the regulations for the following HUD programs:

1. HOME Investment Partnerships (24 CFR part 92);
2. Community Development Block Grants (CDBG) (24 CFR part 570);
3. Hope for Homeownership of Single Family Homes (HOPE 3) (24 CFR part 572) [1]
4. Housing Opportunities for Persons With AIDS (HOPWA) (24 CFR part 574);
5. Emergency Shelter Grants (ESG) (24 CFR part 576);
6. Shelter Plus Care (24 CFR part 582);
7. Supportive Housing (24 CFR part 583); and
8. Youthbuild (24 CFR part 585).

The January 6, 2003, rule proposed to amend each set of program regulations to achieve the following objectives:

1. *Clarify that organizations are eligible to participate in HUD programs without regard to their religious character or affiliation.* The proposed amendments clarified that faith-based organizations are eligible to compete for funding on the same basis and under the same eligibility requirements as all other nonprofit organizations. The fact that an organization is a faith-based organization is not a basis for exclusion from a competition for HUD funds. The Federal government, as well as State and local governments administering funds under HUD programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

2. *Clearly delineate eligible and ineligible uses of HUD funds for all program participants.* The proposed rule provided that eligible and ineligible uses of HUD funds are applicable to *all* recipients of HUD funds. The proposed rule provided that a recipient organization may not use direct HUD funds to support inherently religious activities, such as worship, religious instruction, or proselytization. If the participating organization engages in these activities, the activities must be offered separately, in time or location, from the programs or services directly funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. This requirement ensures that HUD funds provided directly to any recipient are not used to support inherently religious activities. This restriction does not mean that an organization that receives HUD funds cannot engage in inherently religious activities. It means that an organization cannot pay for these activities with direct HUD funds.

3. *Clarify that faith-based organizations will retain their independence.* The proposed rule clarified that a faith-based organization that participates in HUD programs will

[1] Funds are no longer being appropriated for the HOPE 3 program; however, the part 572 regulations remain in place to provide regulatory guidance to existing HOPE 3 grantees. The regulations in part 572 are included within the scope of this rule to reflect the regulatory revisions applicable to faith-based participation and ensure their consistency with the similar regulations in the other parts covered by this final rule.

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

4. *Emphasize that participating organizations cannot discriminate in providing assistance.* The proposed rule clarified that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, faith-based organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Clarify that HUD funds may not be used for acquisition, construction, or rehabilitation of structures to the extent those structures are used for inherently religious activities.* The proposed rule clarified that HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, the proposed rule clarified that HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. *Remove additional assurance requirements imposed only on faith-based organizations.* The proposed rule removed those provisions of HUD's regulations that required only faith-based organizations to provide assurances that they would conduct eligible program activities in a manner that is ''free from religious influences.'' HUD imposes no comparable assurance requirements in any other context. HUD determined that it is inappropriate to require that only faith-based organizations submit additional assurances of compliance with program requirements above and beyond those that any other applicant or recipient is required to provide. All organizations that participate in HUD programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that HUD's regulations may have disqualified faith-based organizations or indicated that faith-based organizations could be disqualified from participating in HUD's programs because the organizations are motivated or influenced by religious faith to provide social services, the proposed rule clarified that this type of restriction is inconsistent with governing law.

7. *Clarify the inapplicability of Executive Order 11246 in the context of grants.* The proposed rule amended the CDBG regulations to provide that Executive Order (E.O.) 11246 (Equal Employment Opportunity), regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60, do not apply to CDBG grantees.

II. Significant Differences Between the January 6, 2003, Proposed Rule and This Final Rule

This final rule follows publication of the January 6, 2003, proposed rule and takes into consideration the public comments received on the proposed rule. After consideration of the public comments, the significant changes made at the final rule stage are the following:

1. *Clarification of applicability of nondiscrimination requirements.* Some public commenters questioned whether the rule would reverse or supersede the applicability to program participants of nondiscrimination requirements. To the extent that statutory nondiscrimination requirements applied to participants in the HUD programs that were the subject of the January 6, 2003, proposed rule, those statutory requirements continue to apply. They are not altered by this rule.

2. *Clarification of when HUD funds may be used for acquisition, construction, or rehabilitation of real property.* The final rule clarifies that HUD funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship. Separate rooms located in a structure that contain sanctuaries, chapels, or other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, may qualify for such assistance to the extent that they are used for eligible, HUD-funded activities. This final rule also clarifies the rules governing disposition of HUD-improved real property after the term of the grant and where there is a change in the use of the property. The following provide examples of application of the revised rule:

Example 1. A one-room church applies for CDBG funds to make several necessary repairs. On Sunday morning, the church serves as a place for congregational worship. During weekdays, the church is used to operate a ''soup kitchen'' for homeless individuals. Accordingly, except for the few hours on Sunday morning when the church holds worship services, the one-room church is used for the purpose of providing meals to homeless individuals—a purpose that is eligible for HUD assistance. The one-room church is ineligible for CDBG-funded improvements because it is the congregation's principal place of worship.

Example 2. A synagogue with several rooms applies for CDBG funds to make necessary repairs to its ''soup kitchen,'' which is operated from two rooms located within the synagogue basement. The congregation does not use these rooms as its principal place of worship; they are used exclusively for the ''soup kitchen.'' Accordingly, repairs to the two rooms are eligible for CDBG assistance.

Example 3. A church applies for HUD funding to construct a homeless shelter, which will contain several rooms for use as a shelter as well as a one-room chapel to be used for weekly religious services and nightly prayer meetings. With the exception of the chapel, the homeless shelter will be used exclusively for eligible HUD-funded activities; no inherently religious activities, such as worship or religious instruction, will be conducted outside of the chapel. Homeless individuals staying at the shelter will be offered the opportunity to participate in the religious services, but attendance will be purely voluntary. HUD may assist the construction on a prorated basis, excluding the costs of the chapel.

Example 4. A mosque purchases an abandoned church and applies for HUD funding to renovate it and use it as an elderly daycare center. The planned renovation will retain the existing exterior facade of the former church, including the stained-glass windows. No inherently religious activities will be conducted within the new daycare center. Although the proposed rehabilitation involves a building formerly used as a church, the entire renovation is eligible for HUD funding because the building will be used solely for eligible HUD activities.

3. *Clarification of Applicability of E.O. 11246.* The proposed rule's exclusion of E.O. 11246 from the CDBG regulations was intended only to reflect the exemption of religious organizations from the religious nondiscrimination requirements of E.O. 11246, as provided in an amendment to E.O. 11246 by E.O.

13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), issued by President Bush on December 12, 2002. The final rule reinstates the reference to E.O. 11246 in the CDBG regulations, and includes the amendment to E.O. 11246 by E.O. 13279, thus making E.O. 11246, as amended, applicable to HUD grantees to the same extent that it would otherwise apply.

4. *Clarification regarding the commingling of funds.* This final rule clarifies that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of this final rule apply to all of the commingled funds.

III. Discussion of the Public Comments Received on the January 6, 2003, Proposed Rule

The public comment period on the proposed rule closed on March 7, 2003. HUD received 188 public comments on the proposed rule. Comments were received from members of Congress, faith-based organizations, public housing agencies (PHAs) and other State and local community development agencies (as well as the national organizations representing PHAs and these State and local agencies), advocates of low-income housing, organizations concerned about First Amendment issues, law firms, and other interested members of the public.

Approximately eight commenters expressed support for the proposed rule, without reservation or request for change. The commenters commended HUD for issuing the proposed rule, writing that the changes ''are long overdue.'' The commenters stated their belief that the regulatory changes proposed by HUD are consistent with constitutional principles, and that the ''proposed regulation not only eliminates unnecessary obstacles, but retains those restrictions necessary under the Establishment Clause.'' One of the commenters urged HUD to expand the scope of the proposed rule to include all HUD programs, and not to limit regulatory changes to the eight community development programs identified in the rule.

The majority of commenters opposed the proposed rule or expressed strong reservations about the rule. The reasons for opposition or reservation varied. In some instances, these commenters supported the overall goals of the proposed rule, but were concerned about certain aspects of the proposal. The majority of the commenters expressed concern that the proposed regulatory changes would conflict with the Establishment Clause and related Supreme Court cases by authorizing Federal funding for churches and other ''pervasively sectarian organizations.'' Other commenters expressed concerns about the civil rights implication of the proposed rule, writing that the proposed changes would open the door to discriminatory practices by faith-based organizations. Other commenters objected to any Federal funding for faith-based organizations on policy grounds.

The following sections of this preamble present a more detailed discussion of the most significant issues and concerns raised by the public commenters on the January 6, 2003, proposed rule and HUD's responses to these comments. The summary of the public comments is organized as follows:

Section IV of this preamble discusses general comments on the proposed rule.

Section V of this preamble discusses the comments regarding faith-based activities.

Section VI of this preamble discusses the comments regarding the use of religious art, icons, scriptures, and other religious symbols.

Section VII of this preamble discusses the comments regarding nondiscrimination in providing assistance.

Section VIII of this preamble discusses the comments regarding Executive Order 11246 and consideration of religion in employment decisions.

Section IX of this preamble discusses the comments regarding structures used for religious activities.

Section X of this preamble discusses the comments regarding the removal of the assurance requirements.

IV. General Comments

Several commenters submitted comments on the proposed rule generally, and did not raise issues or questions about a specific regulatory change.

Comment: Insufficient justification for the proposed rule. Several commenters disagreed that there are currently barriers that prevent participation of faith-based organizations in HUD's programs. The commenters wrote that faith-based organizations have been successfully competing for HUD funds for many years. Another commenter stated that the impetus for the rule appeared to be based on anecdotal evidence. The commenter suggested that if some faith-based organizations are experiencing participation difficulties in localities, HUD should address those situations on a case-by-case basis. Another commenter suggested that the rule is unnecessary because religious institutions already receive a large government subsidy through tax exemption.

HUD Response. HUD disagrees with the statement that obstacles addressed in the proposed rule are based only on anecdotal evidence or that the appropriate method to resolve obstacles is on a case-by-case basis. In its own review of its regulations, HUD found barriers to faith-based organizations partnering with HUD. For example, under the previous rule, HOME program funds, which communities around the country use to construct affordable housing, may not be provided to faith-based organizations ''for any activity, including secular activities'' (*See* 24 CFR 92.257). This final rule, therefore, is necessary to remove these regulatory barriers (whether intentional or unintentional when promulgated) and to ensure that all organizations are able to compete on an equal footing for Federal financial assistance, in a manner that is consistent with constitutional church-state requirements.

Comment: Determination of legitimate faith-based organizations. Several commenters asked how HUD would determine which organizations are legitimate faith-based organizations. The commenters wrote that without guidance or a definition of faith-based organization, the Federal faith-based initiative would be a source of confusion and controversy for both recipients and subrecipients. One commenter recommended that HUD set minimum neutral standards for all eligible grantees, including faith-based organizations, such as a governing board requirement, a plan for public service programs approved by the governing board, and a certification of board responsibility for the programs that are open to the public. Another commenter wrote that the final rule should define the terms ''faith-based'' and ''religious'' organization based on the definition contained in the Internal Revenue Code.

HUD Response. HUD declines to adopt these suggestions. One of the objectives of this rule is to move away from unnecessary Federal inquiry into the religious nature, or absence of religious nature, of an applicant for HUD funds. With respect to any applicant for HUD funds, HUD's focus should always be that (1) the applicant is an eligible applicant for a program, as ''eligible applicant'' is defined for that program; (2) the applicant meets any

other eligibility criteria that the program may require; and (3) the applicant commits to undertake only eligible activities with HUD funds and abide by all program requirements that govern those funds.

Comment: Assessment of management and fiscal capability of faith-based organizations. Several commenters questioned how HUD would determine the management and fiscal capability of faith-based organizations. Some of the commenters asked whether faith-based organizations would be required to be nonprofits with section 501(c)(3) status under the Internal Revenue Code. These commenters wrote that many faith-based organizations have secured section 501(c)(3) status in order to receive government funding. The commenters wrote that obtaining and maintaining this status demonstrates a certain level of competence and fiscal accountability, and suggested that section 501(c)(3) status be a requirement for participation in HUD programs. One commenter wrote that faith-based organizations should be explicitly required to comply with OMB Circulars A–122 and A–133 to ensure the degree of financial separation necessary to protect the ''wall'' between church and state. The commenter wrote that ''Federal cost principles are carefully designed to preclude passing any element of an unallowable cost (such as lobbying) through to the government. These cost principles also apply to Federal grant funds (except block grants) that are passed through State or Local governments, as well as any matching funds raised from non-governmental sources.''

HUD Response. As noted in the response to the preceding comment, faith-based organizations participating in HUD programs must generally meet the same criteria as all other applicants for HUD funds. These criteria help to ensure that Federal dollars are allocated only to those program providers with sufficient administrative and financial controls to properly administer the Federal funds. The purpose of this rule is to ensure that HUD is not imposing greater requirements on faith-based organizations because they are faith-based organizations. For example, if regulations for a HUD program require participating nonprofit organizations to have section 501(c)(3) status, then all participating organizations must have this status to receive HUD funds. If there is no section 501(c)(3) requirement imposed on nonprofit organizations by the HUD regulation, HUD is not going to impose this requirement on faith-based organizations simply because they are faith-based organizations. Similarly, if the program regulations require grant recipients to comply with OMB cost accounting circulars, then all grantees, including grantees that are faith-based organizations, must comply with these circulars. If the program regulations, however, provide for other cost accounting procedures, then the grantees, including faith-based grantees, need comply only with the specified cost accounting procedures.

Comment: Difficulty in overseeing and enforcing compliance with regulations by faith-based organizations. Several commenters wrote that the monitoring and enforcement of faith-based organizations would be administratively burdensome, and raise the constitutionally troubling prospect of excessive government oversight of religious activity. The commenters raised concerns about the enforceability of the rule as a whole, but some commenters focused on the provisions authorizing the acquisition, construction, and rehabilitation of religious structures. One of these commenters wrote: ''Allowing HUD and religious organizations to split the cost of building a facility (yet barring the use of such a facility for religious activity) will cause HUD and the religious organization to enter into what is, at best, unseemly negotiations as to what counts as religious activity or not.'' The commenters urged that HUD provide guidance on the monitoring and enforcement of the new requirements and consider the use of mandatory training sessions as part of this guidance.

HUD Response. The enforcement of HUD regulations does not increase because some program participants are faith-based organizations. HUD has a responsibility to monitor all program participants to ensure that HUD funds (taxpayer funds) are used in accordance with HUD program and any government-wide requirements. Inappropriate use of HUD funds or failure to comply with HUD program requirements is not a possibility that arises only when program participants are faith-based organizations. Nonprofit organizations generally obtain funds for their social service purposes from several sources, not just HUD or the Federal government. Failure of a nonprofit organization (or any grantee) to ensure that the Federal portion of their funds is not used for non-Federal purposes or prohibited purposes (such as lobbying) will result in the imposition of sanctions or penalties on the organization. Violations of HUD program requirements can be committed by all types of program participants. All HUD program participants must carefully manage their various sources of Federal funds and abide by OMB cost accounting circulars, where applicable, or other cost accounting methods that may be specified in individual program regulations. Moreover, any inherently religious activities would be non-HUD activities, so the normal monitoring procedures would not require HUD to distinguish between religious and nonreligious ineligible activities and would more than suffice to address the commenters' concerns. Therefore, HUD does not see the need for additional requirements or guidance in this area.

V. Comments Regarding Inherently Religious Activities

Comment: Define the term ''inherently religious activities.'' Several commenters requested a definition of ''inherently religious activities.'' The commenters wrote that while a definition need not be exhaustive of all possible inherently religious activities, the final rule should provide a list of activities that are clearly ineligible. Another commenter suggested that HUD should retain the current wording used in the regulations, which refers to activities being ''free from religious influences'' and/or ''entirely for secular purposes.''

HUD Response. The final rule specifies that inherently religious activities include ''worship, religious instruction, or proselytization.'' As the commenters themselves note, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the regulatory definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Rather than attempt to establish an exhaustive regulatory definition, this final rule retains the language of the proposed rule, which provides examples of the general types of activities that are prohibited by the regulations. This approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. For example, prayer and worship are inherently religious, but social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of ''ministry.'' If HUD determines that additional guidance is needed regarding specific activities that are ''inherently religious,'' HUD will provide this guidance.

Comment: Clarify the term ''separation in time or location.'' Several commenters requested that HUD clarify

the separation ''in time or location'' restriction. The commenters wrote that the vagueness of the current language would lead to confusion among service providers. Some commenters offered suggestions for how the language could be clarified. For example, one commenter wrote that the rule should provide that the term ''separation in time or location'' means that clients must be allowed the opportunity to not participate in religious activities in a meaningful manner such that they do not have to hear or see the inherently religious activities. Another commenter wrote that greater clarity could be provided by specifying that religious activities must be separated by both time *and* location. Yet another commenter wrote that the final rule could more clearly define ''time'' by providing guidelines on an acceptable length of time between activities, such as 15 or 30 minutes.

HUD Response. HUD declines to adopt the suggestions raised by the commenters. HUD does not believe that the separation of time or location requirement is ambiguous and necessitates additional regulation for proper adherence. HUD believes that existing regulations and this rule are clear that faith-based organizations, using direct Federal funds for certain activities, must separate their inherently religious activities from the federally funded activities. HUD believes that a common sense approach to this regulation supported by HUD guidance, not a detailed regulatory approach, is the better one. For example, suppose that a community center is used for adult education in the evening, and that one of the organizations participating in the adult education initiative provides classes in English proficiency. The organization cannot use the English language class as a means of providing inherently religious instruction. The religious study class has to be provided in another classroom or building (separate in location) or at another time (if the same classroom is to be used). Concerning the recommendation that inherently religious activities be separated from HUD-funded activities by both time *and* location, HUD believes that this is legally unnecessary and that it would impose an unnecessarily harsh burden on small faith-based organizations, which may have access to only one location that is suitable for the provision of HUD-funded services.

Comment: Restrict activities that are ''inherently infused with religious doctrine.'' Two commenters wrote that there might be services provided to clients that are not inherently religious activities, but that are inherently infused with religious doctrine. For example, case management services by counselors could be infused with religious teachings and doctrine. The commenters wrote that the final rule should prohibit any services that are infused with religious doctrine.

HUD Response. HUD believes that existing HUD regulations and this rule are sufficiently explicit that direct HUD funds may not be used for religious proselytization. Program participants cannot use supportive services directly funded by HUD, such as counseling, to serve as a format for proselytization. This is a violation of program requirements, and the program participant that violates the prohibition on proselytization will be subject to applicable sanctions and penalties. No additional regulatory changes are required.

Comment: Ensure the availability of secular alternative service providers. Several commenters wrote that HUD should clarify that beneficiaries have the right to receive services from a different or non-religious provider, and that the beneficiaries be informed of this right by the faith-based provider. Some commenters suggested that a list of alternative service providers be in place and distributed to all beneficiaries or potential beneficiaries. Other commenters suggested that HUD ensure that funding be made available to a variety of providers within a service area to ensure that secular alternatives are viable, appropriate, and available. The commenters wrote that without reasonable secular alternatives, beneficiaries might be forced to participate in programs provided by faith-based organizations where they may be required to participate in religious activity in order to receive essential government-funded benefits.

HUD Response. HUD declines to adopt the recommendations of the commenters. Under this rule, no beneficiary served by a HUD-funded provider directly funded by HUD will be required to participate in inherently religious activities as a condition of receiving services. The commenters' recommendations run counter to the objectives that HUD is trying to achieve through this rule. HUD's general objective is to eliminate barriers to faith-based organizations, to welcome their participation in HUD programs, and most important, to ensure they are treated like other program participants. To develop a list that highlights which HUD program providers may be faith-based organizations and which are not, would defeat the ''neutrality'' objective sought by this rulemaking.

VI. Comments Regarding Religious Art, Icons, Scriptures, and Other Religious Symbols

Comment: Use of religious art or icons should not be permitted. Several commenters wrote that the use of religious art or icons can constitute a subtle but powerful form of proselytization or may be offensive to some persons. The commenters suggested that HUD prohibit the use of rooms or other space for providing HUD-funded services unless such items have been removed. Two commenters wrote that although a faith-based organization should not be required to remove icons from an existing chapel or chapel annex if they are used for providing HUD-funded services, the organization should not be permitted to have religious icons in the common area or the individual units of a HUD-funded shelter or housing project, or other HUD-funded space that is not also used for inherently religious activities.

HUD Response. HUD declines to impose this restriction on HUD program participants that are faith-based organizations. A number of Federal statutes affirm the principle embodied in this rule. (*See, e.g.*, 42 U.S.C. 290kk–1(d)(2)(B).) For no other program participant do HUD regulations prescribe the types of artwork, statues, or icons that may be placed within or without the structures or rooms in which HUD-funded services are provided. A prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in the program than other organizations, and would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional church-state guidelines, a faith-based organization that participates in HUD programs will retain its independence and may continue to carry out its mission, provided that it does not use direct HUD funds to support any inherently religious activities. Accordingly, this final rule continues to provide that faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols.

VII. Comments Regarding Nondiscrimination in Providing Assistance

Comment: Include a more explicit statement prohibiting faith-based organizations from requiring program beneficiaries to participate in religious

activities. Two commenters wrote that HUD should strengthen the provisions of the rule specifying that participation by a beneficiary in religious activities offered by a faith-based service provider is voluntary, and that the faith-based organization may not discriminate against a prospective beneficiary for refusing to participate in such activities. The commenters wrote that while the preamble to the proposed rule provides that a religious organization may not discriminate based on ''refusal to actively participate in a religious service,'' the regulatory text only prohibits discrimination on the basis of ''religion or religious belief.'' The commenters suggested that the regulatory text should be revised to track the stronger language of the preamble. The commenters, however, objected to the use of the word ''actively'' in this preamble language and urged that HUD clarify that faith-based organizations may not discriminate against clients who refuse to participate in religious activities—whether actively or passively.

HUD Response. HUD believes that the language in the rule prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities is sufficiently explicit. A prohibition on discrimination against beneficiaries on the basis of religion or religious belief is straightforward and requires no further elaboration.

Comment: Require fair housing training for staff of HUD-funded faith-based organizations. Require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries. Two commenters wrote that training of Fair Housing Act requirements is vital to ensure that the employees of faith-based organizations understand their responsibility to provide housing services free from discrimination. Two commenters stated that the final rule should require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries, regardless of religious persuasion. Another commenter stated that HUD's rule should prohibit organizations participating in HUD-funded programs from discussing religious beliefs with prospective beneficiaries.

HUD Response. HUD believes that its existing regulations and this rule are clear that HUD program participants cannot discriminate in providing services to beneficiaries on the basis of their religious belief, or the absence of such belief. With respect to fair housing training and advertising standards, HUD declines to impose requirements on faith-based organizations participating in HUD programs that are not imposed on all program participants.

Comment: Nondiscrimination provisions fail to properly take into account the distinction between ''direct'' and ''indirect'' assistance appearing elsewhere in the proposed rule. One commenter wrote that where the assistance is indirect, a faith-based organization, consistent with the Establishment Clause, may require beneficiaries to participate in its religious program.

HUD Response. This rule does not subject religious organizations that receive HUD funds as the result of a genuine and independent choice of a beneficiary—for example, where the entity administering HUD funds has established a voucher, coupon, certificate, or similar funding mechanism—to the restrictions on inherently religious activities that apply to organizations directly funded by HUD. This rule does not, therefore, prohibit ''indirectly funded'' organizations from offering assistance that integrates faith and social services and requires participation in all aspects of their programs. As noted in section II of the preamble to this final rule, however, the proposed rule did not offer amendments to any nondiscrimination provisions of existing statutes. Thus, to the extent that such statutes restrict the activities of indirectly funded organizations, those restrictions remain in effect. Accordingly, the statute that applies to each program should be reviewed for the scope of its applicability.

VIII. Comments Regarding Executive Order 11246 and Religion as a Factor in Employment Decisions

This final rule clarifies the applicability of E.O. 11246 to the CDBG regulations, and includes the amendment of E.O. 11246 by E.O. 13279. E.O. 13279, issued by the President on December 12, 2002, allows a government contractor or subcontractor that is a religious organization, corporation, association, educational institution, or society to take religion into consideration in the employment of individuals to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempt or excused from complying with the other requirements contained in Executive Order 11246. Thus, E.O. 11246, as amended, is applicable to HUD grantees to the same extent that it would otherwise apply.

Comment: HUD's rationale for eliminating compliance with E.O. 11246 is flawed. Several comments advised that HUD's approach to E.O. 11246 was flawed.

HUD Response. As discussed earlier in this preamble, the final rule clarifies the applicability of E.O. 11246 as amended, to the same extent that it would otherwise apply.

Comment: Do not permit faith-based organizations to consider religion in employment decisions. Rule should prohibit employment discrimination on the basis of sexual orientation. Several of the commenters wrote that the final rule should expressly prohibit discrimination against any employee or applicant for employment on the basis of religion. Other commenters wrote that faith-based organizations and other secular organizations may be generally able to discriminate on the basis of sexual orientation or gender identity because there does not currently exist a Federal law prohibiting this discrimination.

HUD Response. The purpose of this rulemaking is to eliminate barriers that HUD has imposed administratively to the participation of faith-based organizations in HUD programs. The purpose of this rule is not to establish nondiscrimination requirements or to alter existing nondiscrimination requirements. Current requirements of statute or Executive Order apply to HUD programs to the same extent that they applied under the prior rule.

Comment: Clarify that any equal employment opportunity exemption is consistent with Title VII. Several commenters suggested that HUD clarify that any exemption to the employment nondiscrimination requirements contained in the rule is consistent with the exemption provided by Title VII, and does not constitute a blanket exemption of equal employment opportunity. The commenters wrote that, under Title VII, religious organizations are allowed to employ individuals of a particular religion to perform the work of the religious organization, but are not exempt with respect to any other type of discrimination.

HUD Response. Again, it was not HUD's objective in this rulemaking to revise program requirements imposed by statute. HUD's objective in this rulemaking was to identify program requirements, imposed by HUD through rulemaking as a matter of administrative discretion, that constitute unwarranted barriers to the participation of faith-based organizations in HUD programs. As noted earlier in this preamble, existing nondiscrimination

requirements are not altered by this rule.

Comment: Faith-based organizations should be required to abide by State and local civil rights laws. Several commenters wrote that HUD should clarify that the rule will not preempt State and local laws regarding the funding of faith-based organizations, including civil rights statutes governing employment nondiscrimination. The commenters wrote that some States and localities have stringent laws regarding the funding of faith-based groups with Federal, State, and local funds, and that it is unclear whether the proposed rule, as written, would preempt these laws that have been in effect for decades.

HUD Response. The requirements that govern funding under the HUD programs at issue in these regulations do not raise a question of preemption of State or local laws. Federal funds, however, carry Federal requirements. No organization is required to apply for funding under these programs, but organizations that apply and are selected for funding must comply with the requirements applicable to the program funds. As noted above in this preamble, language has been added to the rule clarifying that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them; however, if the funds are commingled, these regulations apply to all of the commingled funds.

IX. Comments Regarding Structures Used for Religious Purposes

As noted in section II of the preamble to this final rule, the final rule clarifies this requirement by stating that HUD funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship. This final rule also clarifies the rules governing disposition of HUD-improved real property after the term of the grant and where there is a change in the use of the property.

Comment: Government funding for religious structures is unconstitutional. Several commenters objected to the use of any HUD funds in the acquisition, construction, or rehabilitation of religious structures. The objection to this proposal included the comment that the proposed ''attribution'' requirements would be unenforceable by State and local agencies administering the HUD grant, and are contrary to Supreme Court decisions that prohibit spending government funds on structures that are not exclusively secular in their use. Other comments offered that, even if the proposed rule could be effectively enforced, it would require such excessive monitoring as to constitute excessive government entanglement with religious institutions. The commenters wrote that HUD would need to establish effective safeguards to avoid the perceived constitutional pitfalls.

Other comments stated that nothing in the rule would prevent a faith-based organization from converting a HUD-funded portion of a structure for religious use at some future date. The overall concern expressed by these commenters was that these provisions would inevitably lead to the unconstitutional government funding of religion. One of the commenters wrote that, under governing legal precedent, public funds may be used by religious institutions for capital improvements only when the structures are wholly limited to secular use. Other commenters suggested that HUD require that the HUD-funded portions of a structure be used for secular purposes for the life of the building. Several commenters suggested that HUD establish procedures for recapturing the Federal assistance if the HUD-funded portion of the structure is ever used for a religious purpose.

HUD Response. In the preamble to this final rule, HUD previously addressed the issue of monitoring and enforcement. HUD finds no basis for requiring greater oversight and monitoring of faith-based organizations than other program participants simply because they are faith-based organizations. All program participants must be monitored for compliance with program requirements, and no program participant may use HUD funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the program at issue. Many nonreligious organizations participating in HUD programs also receive funding from several sources (private sources, State, or local sources) to carry out activities that are ineligible for funding under HUD programs. In many cases, the non-eligible activities are secular activities but not activities eligible for funding under HUD programs. All program participants receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. The regulations for the programs prescribe the cost accounting procedures that are to be followed in using HUD funds.

With respect to structures, HUD believes that the prorated funding of improvements to a structure that has a mixed use—both religious and nonreligious—is not itself a violation of the Constitution. In a neutral program in which the government directly funds the capital improvements of institutions that administer Federal social welfare programs, the government need only put in place safeguards to ensure that public money is not used to finance inherently religious activities. The proposed rule satisfied this requirement by prohibiting the use of HUD funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities—a prohibition that is enforced by generally applicable cost-accounting standards carefully designed to ensure that HUD monies are not used to support any ineligible activity. Therefore, the final rule's prohibition on the funding of capital improvements for sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship simply provides extra assurance that HUD-funded capital improvements will not be used to support inherently religious activities, and HUD's rule is well within the bounds of the Constitution.

HUD disagrees with those who commented that preventing the use of direct HUD capital-improvement funds for inherently religious activities would necessarily fail or, in the process, excessively entangle the government in the affairs of recipients or subrecipients that are religious organizations. As to the question whether limiting HUD funding to eligible, nonreligious activities is possible, it merits emphasis that HUD must generally perform the very same cost-accounting functions to all organizations. Because inherently religious activities are non-HUD activities, HUD need not distinguish between program participants' religious and nonreligious non-HUD activities; the same mechanism by which HUD polices the line between ineligible and eligible activities will serve to exclude inherently religious activities from funding. This system of monitoring is more than sufficient to address the commenters' concerns, and the amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly funded programs that the Supreme Court has sustained.

With respect to the concern about the funding of capital improvements for religious structures that are later converted to non-HUD uses, the final rule clarifies that disposition of HUD-improved property after the term of grants to religious organizations, and changes in the use of property improved for use by religious organizations, are subject to government-wide regulations governing real property disposition. HUD has regulations (*see* 24 CFR parts 84 and 85) that address the terms under which such grantees must use the property for eligible activities, and the terms under which federally funded improvements must be ''bought back'' if such grantees decide to discontinue their involvement in the program.

X. Comments Regarding the Removal of Assurance Requirements

Comment: HUD should not remove the assurance requirements. Several commenters wrote that by removing the assurance requirements, HUD is condoning religious influences and activities in HUD-funded programs. The commenters wrote that the Federal government has rightly recognized that faith-based organizations are unique in their mission and require unique assurances. The commenters disagreed with HUD's rationale for removing the requirements, writing that HUD requires many certifications and assurances that grantees will comply with various laws and regulations. The commenters wrote that retaining this assurance would not be inconsistent with requiring other assurances of compliance with laws and regulations. Two commenters agreed that it is unfair to apply the assurance requirement only to faith-based organizations, and suggested that rather than eliminating the requirement, HUD should make it applicable to all grantees.

HUD Response. The final rule remains unchanged from the proposed rule on this matter. Additional assurances, such as those that are being removed by this rule, only perpetuate, and unfairly so, a presumption that program requirements applicable to all program participants are insufficient to bind faith-based organizations, and additional requirements and assurances must be imposed on these organizations. No additional requirements are needed.

In issuing this rule, HUD's general approach is that faith-based organizations are not a category of applicants or program participants that require additional requirements or additional oversight in order to ensure compliance with program regulations. In issuing this rule, HUD's approach is that faith-based organizations well understand that inherently religious activities cannot be undertaken with Federal funding and must remain separate from federally funded activities, and no additional requirements are necessary. The requirements for use of funds under a HUD program apply to, and are binding on, all HUD program participants.

XI. Findings and Certifications

Regulatory Planning and Review

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

Unfunded Mandates Reform Act

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

Executive Order 13132, Federalism

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local governments in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, HUD specifically solicited comment from State and local government officials on the January 6, 2003, proposed rule, and no comments from these entities were submitted that raised federalism concerns.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the final rule is to remove regulatory prohibitions that currently restrict the equal participation of faith-based organizations (large and small) in HUD's programs.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.218, 14.219, 14.225, 14.227, 14.228, 14.231, 14.235, 14.237, 14.238, 14.239, 14.241, 14.243, 14.246, 14.248, 14.512, 14.514, and 14.515.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands trust territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS/HIV, Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

■ For the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 1. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 2. Revise § 92.257 to read as follows:

§ 92.257 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the Federal government nor a State or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

(c) A religious organization that participates in the HOME program 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 HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization 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 the HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds in this part. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 92.504 [Amended]

■ 3. In § 92.504, remove paragraph (c)(3)(x) and redesignate paragraph (c)(3)(xi) as paragraph (c)(3)(x).

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 4. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 5. Revise § 570.200(j) to read as follows:

§ 570.200 General policies.

* * * * *

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program 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 CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization 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.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 570.503 [Amended]

■ 6. Amend § 570.503 as follows:

■ a. Remove paragraph (b)(6);

■ b. Redesignate paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7), respectively; and

■ c. In newly designated paragraph (b)(7)(ii), replace all references to ''paragraph (b)(8)(i) of this section'' with ''paragraph (b)(7)(i) of this section.''

■ 7. Revise § 570.607 to read as follows:

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, *12086,* and 12107 (3 CFR 1964–1965 Comp. p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

■ 8. The authority citation for 24 CFR part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

■ 9. Revise § 572.405(d) to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(d) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPE 3 program. Neither the Federal government nor a State or local government receiving funds under HOPE 3 programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPE 3 program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the HOPE 3 program 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 HOPE 3 funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPE 3-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPE 3-funded religious organization 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.

(4) An organization that participates in the HOPE 3 program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPE 3 funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPE 3 funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPE 3 funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOPE 3 funds in this part. Sanctuaries, chapels, or other rooms that a HOPE 3-funded religious congregation uses as its principal place of worship, however, are ineligible for HOPE 3-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 10. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 11. Revise § 574.300(c) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-

based are eligible, on the same basis as any other organization, to participate in the HOPWA program. Neither the Federal government nor a State or local government receiving funds under HOPWA programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPWA program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) An organization that participates in the HOPWA program 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 HOPWA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPWA-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPWA-funded religious organization 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.

(4) An organization that participates in the HOPWA program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPWA funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPWA funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPWA funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOPWA funds in this part. Sanctuaries, chapels, or other rooms that a HOPWA-funded religious congregation uses as its principal place of worship, however, are ineligible for HOPWA-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

■ 12. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

■ 13. Revise § 576.23 to read as follows:

§ 576.23 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Shelter Grants program. Neither the Federal government nor a State or local government receiving funds under Emergency Shelter Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Emergency Shelter Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Emergency Shelter Grants program 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 Emergency Shelter Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Shelter Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Shelter Grants-funded religious organization 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 the Emergency Shelter Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Emergency shelter grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency shelter grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, emergency shelter grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to emergency shelter grants in this part. Sanctuaries, chapels, or other rooms that an Emergency Shelter Grants-funded religious congregation uses as its principal place of worship, however, are ineligible for Emergency Shelter Grants-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 582—SHELTER PLUS CARE

■ 14. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11470b.

■ 15. Revise § 582.115(c) to read as follows:

§ 582.115 Limitations on assistance.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the S+C program. Neither the Federal government nor a State or local government receiving funds under S+C programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the S+C program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the S+C program 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 S+C funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide S+C-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an S+C-funded religious organization 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.

(4) An organization that participates in the S+C program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

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PART 583—SUPPORTIVE HOUSING PROGRAM

■ 16. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

■ 17. Revise § 583.150(b) to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(b) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Supportive Housing Program. Neither the Federal government nor a State or local government receiving funds under Supportive Housing programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the Supportive Housing Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the Supportive Housing Program 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 Supportive Housing Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Supportive Housing Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Supportive Housing Program-funded religious organization 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.

(4) An organization that participates in the Supportive Housing Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Supportive Housing Program funds in this part. Sanctuaries, chapels, or other rooms that a Supportive Housing Program-funded religious congregation uses as its principal place of worship, however, are ineligible for Supportive Housing Program-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 585—YOUTHBUILD PROGRAM

■ 18. The authority citation for 24 CFR part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

■ 19. Revise § 585.406 to read as follows:

§ 585.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Youthbuild program. Neither the Federal government nor a State or local government receiving funds under Youthbuild programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Youthbuild program may not engage in inherently religious

activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Youthbuild Program 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 Youthbuild Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Youthbuild Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Youthbuild Program-funded religious organization 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 the Youthbuild program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Youthbuild funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Youthbuild funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Youthbuild funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Youthbuild funds in this part. Sanctuaries, chapels, or other rooms that a Youthbuild-funded religious congregation uses as its principal place of worship, however, are ineligible for Youthbuild-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

Dated: September 22, 2003.

Mel Martinez,

Secretary.

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