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Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 2

RIN 1290–AA29

Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The United States Department of Labor (DOL or the Department) proposes to amend its general regulations regarding the equal treatment of religious organizations in Department of Labor programs and the protection of religious liberty for Department of Labor social service providers and beneficiaries. Specifically, this proposed rule would: Clarify the definition of direct and indirect financial assistance, replace the term ''inherently religious activities'' with the term ''explicitly religious activities'' and define the latter term as ''including activities that involve overt religious content such as worship, religious instruction, or proselytization,'' require faith-based organizations administering a program supported with direct DOL financial assistance to provide beneficiaries with a written notice informing them of their religious liberty rights, including the right to a referral to an alternative provider if the beneficiary objects to the religious character of the organization providing services, and add a provision stating that decisions about awards of Federal financial assistance must be free from political interference and based on merit. These changes are necessitated by the issuance in November 2010, of Executive Order 13559, *Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations.*

DATES: Comments must be submitted (postmarked, sent, or received) by October 5, 2015.

ADDRESSES: You may submit comments concerning the NPRM, identified by RIN number 1290–AA29, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on-line for submitting comments.
- *Email: cfbnp@dol.gov.* Include RIN number 1290–AA29 in the subject line of the message.
- *Fax:* (202) 693–6091 (for comments of 10 pages or less).
- *Mail, hand delivery, express mail, messenger, or courier service:* Phil Tom, Director, Center for Faith-Based and Neighborhood Partnerships (CFBNP), U.S. Department of Labor, 200 Constitution Ave. NW., Room C–2318, Washington, DC 20210.

Instructions: Please submit your comments by only one method. Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning (202) 693–6017. All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received, including any personal information provided, are considered part of the public record and available for public inspection online at *http://www.regulations.gov* and during normal business hours at Room C–2318, 200 Constitution Avenue NW., Washington, DC 20210. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection. Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this NPRM will be made available in the following formats: Large print, electronic file on computer disc, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, contact CFBNP at (202) 693–6017.

FOR FURTHER INFORMATION CONTACT: Phil Tom, Director, Center for Faith-Based and Neighborhood Partnerships (CFBNP), U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW., Room C–2318, Washington, DC 20210; telephone: (202) 693–6017. Please note this is not a toll-free number. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This proposal concerns and implements two Executive Orders: Executive Order 13279, *Equal Protection of the Laws for Faith-Based and Community Organizations,* issued on December 12, 2002, 67 FR 77141 (Dec. 16, 2002) and Executive Order 13559, *Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations,* issued on November 17, 2010, 75 FR 71319 (Nov. 22, 2010), which amends Executive Order 13279. Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and other community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 asked specified agency heads to review and evaluate existing policies relating to Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria that have implications for faith-based and community organizations.

On July 12, 2004, the Department of Labor issued regulations through notice and comment rulemaking implementing Executive Order 13279 at 29 CFR part 2, subpart D, *Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries* (''Equal Treatment Regulations''), which apply to all providers that implement DOL-supported social service programs. 69 FR 41882. These regulations clarify that faith-based and community organizations may participate in the Department's social service programs without regard to the organizations' religious character or affiliation, and are able to apply for and compete on an equal footing with other eligible organizations to receive DOL support. 29 CFR 2.30. In addition, these regulations ensure that the Department's social service programs are implemented in a manner consistent with the Constitution, including the Religion Clauses of the First Amendment. *Id.*

The current Equal Treatment Regulations are divided into seven sections. Section 2.30 sets forth the purpose of the regulations as explained in the previous paragraph. Section 2.31 provides definitions for certain terms

used in the regulations, including ''Federal financial assistance,'' ''social service program,'' ''DOL,'' ''DOL-supported social service program'', ''DOL social service program'', ''DOL social service provider,'' ''DOL social service intermediary provider,'' and the term ''DOL support.'' Section 2.32 clarifies that religious organizations receiving DOL support may continue to carry out their religious activities provided that no direct DOL support is used to support inherently religious activities. Specifically, religious organizations that receive DOL support need not remove religious signs or symbols from their facilities offering DOL-supported services and may continue to select their board members and otherwise govern themselves on a religious basis.

Currently, DOL social service providers, including State and local governments and other intermediaries administering DOL support, have certain responsibilities as recipients of DOL support. Section 2.33 of the Equal Treatment Regulations sets forth these responsibilities, namely that as providers of DOL support, they must not discriminate for or against a current or prospective beneficiary on the basis of religion or religious belief. In addition, they must ensure that no direct DOL support is used to support inherently religious activities, except in very limited circumstances, which are explained in paragraph (b)(3) of this section. As a general rule, if a provider engages in inherently religious activities, such activities must be offered separately, in time or location, from the social service programs receiving direct DOL financial assistance, and participation must be voluntary for the beneficiaries of DOL social service programs. Paragraph (c) of § 2.33 clarifies that these responsibilities do not apply to social service programs where DOL support is provided to a religious organization indirectly. Religious and other non-governmental organizations will be considered to have received support indirectly, for example, if as a result of a program beneficiary's genuine and independent choice the beneficiary redeems a voucher, coupon, or certificate that allows the beneficiary to choose the service provider, or some other mechanism is provided to ensure that beneficiaries have a genuine and independent choice among providers or program options.

Section 2.34 of the existing Equal Treatment Regulations addresses the application of the regulations to State and local funds. This section clarifies that if a State or local government contributes its own funds (voluntarily or in accordance with a matching funds program) to supplement Federal funds that support DOL social service programs, the State or local government has the option to segregate the Federal funds or commingle them. If the funds are commingled, the regulations apply to both the Federal and the State or local funds.

Section 2.35 clarifies that receipt of DOL support does not cause religious organizations to forfeit their exemption from title VII of the Civil Rights Act of 1964's prohibitions on employment discrimination on the basis of religion. However, the Equal Treatment Regulations do not alter the effect of other statutes which may require recipients of certain types of DOL support to refrain from religious discrimination.

Finally, § 2.36 of the current rule establishes alternative mechanisms by which organizations can prove they are nonprofit, which is sometimes an eligibility requirement for receiving DOL support. Such mechanisms, however, do not apply where a statute requires a specific method for establishing nonprofit status.

Shortly after taking office, President Obama signed Executive Order 13498, *Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships,* 74 FR 6533 (Feb. 9, 2009). Executive Order 13498 changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships and established the President's Advisory Council for Faith-Based and Neighborhood Partnerships (Advisory Council). The President created the Advisory Council to bring together experts to, among other things, make recommendations to the President for changes in policies, programs, and practices that affect the delivery of social services by faith-based and other neighborhood organizations.

The Advisory Council issued its recommendations in a report entitled *A New Era of Partnerships: Report of Recommendations to the President* in March 2010 (available at *http://www.whitehouse.gov/sites/default/files/microsites/ofbnp-council-final-report.pdf*). The Advisory Council Report included recommendations to amend Executive Order 13279 in order to clarify the legal foundation of partnerships and offered a revised set of fundamental principles to guide agency decision-making in administering Federal financial assistance and support to faith-based and neighborhood organizations.

President Obama signed Executive Order 13559, *Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations,* on November 17, 2010. 75 FR 71319 (available at *http://www.gpo.gov/fdsys/pkg/FR-2010-11-22/pdf/2010-29579.pdf*). Executive Order 13559 incorporated the Advisory Council's recommendations by amending Executive Order 13279 to:

- emphasize that religious providers are welcome to compete for government social service funding and maintain a religious identity as described in the order;
- clarify (i) the principle that organizations engaging in explicitly religious activity must separate these activities in time or location from programs supported with direct Federal financial assistance, (ii) that participation in any explicit religious activity cannot be subsidized with direct Federal financial assistance, and (iii) that participation in such activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance;
- direct agencies to adopt regulations and guidance that distinguish between ''direct'' and ''indirect'' Federal financial assistance;
- clarify that the standards in these proposed regulations apply to sub-awards as well as prime awards;
- require agencies that provide Federal financial assistance for social service programs to post online regulations, guidance documents, and policies that have implications for faith-based and neighborhood organizations and to post online a list of entities receiving such assistance;
- state that the Federal government has an obligation to monitor and enforce all standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- require agencies that administer or award Federal financial assistance for social service programs to implement protections for the beneficiaries or prospective beneficiaries of those programs (these protections include providing referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services, and ensuring that written notice of these and other protections is provided to beneficiaries before they enroll in or receive services from the program); and

• state that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference, and must be made on the basis of merit, not on the basis of the religious affiliation, or lack of affiliation, of the recipient organization.

In addition, Executive Order 13559 created the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies. Executive Order 13559, § 1(c) (amending § 3 of Executive Order 13279).

The Executive Order also required OMB, in coordination with the Department of Justice, to issue guidance to agencies on the implementation of the Order following receipt of the Working Group's report. In August 2013, OMB issued such guidance. In this guidance, OMB instructed specified agency heads to adopt regulations and guidance that will fulfill the requirements of the Executive Order to the extent such regulations and guidance do not exist and to amend any existing regulations and guidance to ensure that they are consistent with the requirements set forth in Executive Order 13559. Memorandum from Sylvia M. Burwell, Director, on Implementation of Executive Order 13559 to Heads of Executive Departments and Agencies (Aug. 2, 2013) (available at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-19.pdf*. Pursuant to the August 2, 2013 OMB Memo, the Department is hereby publishing this proposed rule amending its existing regulations to ensure they are consistent with Executive Order 13279 as amended by Executive Order 13559.

As explained below, the Department's existing Equal Treatment Regulations at 29 CFR part 2, subpart D meet many of the provisions of Executive Order 13559. However, a few provisions will need to be revised or proposed in order to meet the requirements of Executive Order 13279 as amended. Existing sections §§ 2.30 and 2.32 of the Equal Treatment Regulations emphasize that religious providers are eligible on the same basis as any other organization to seek DOL support or participate in DOL programs for which they are otherwise eligible. Section 2.32 also clarifies that religious providers retain their independence and religious identity. Section 2.33 prohibits discrimination against beneficiaries on the basis of religion or religious belief and sets forth the requirements related to inherently religious activities in DOL-supported social service programs. Specifically, § 2.33 prohibits organizations from using direct DOL support for inherently religious activities, such as worship, religious instruction, or proselytization, and requires DOL social service providers to take certain steps to separate out in time or location their inherently religious activities from the services that they offer with direct DOL support. This provision also clarifies that the restrictions on inherently religious activities do not apply where DOL support is provided indirectly to organizations, or where there is extensive government control over the environment of a DOL-supported social service program, such that affirmative steps must be taken by the social service provider to ensure that beneficiaries are able to exercise freely their religion. And finally, the current Equal Treatment Regulations already apply to both prime and sub-awards. *See* 29 CFR 2.31(f) (defining term ''DOL social service intermediary provider''); *see also* 29 CFR 2.33 (enumerating responsibilities of DOL providers, including intermediary providers and State and local governments administering DOL support).

II. Overview of Proposed Rule

A. Purpose of the Proposed Rule

Consistent with Executive Order 13559, this proposed rule would revise the Department's Equal Treatment Regulations to: (1) clarify the distinction between direct and indirect Federal financial assistance as well as the rights and obligations of DOL social service providers; (2) replace the term ''inherently religious activities'' with the term ''explicitly religious activities'' and define the latter term as ''including activities that involve overt religious content such as worship, religious instruction, or proselytization,'' (3) require faith-based organizations administering a program supported with direct DOL financial assistance to provide beneficiaries with a written notice informing them of their religious liberty rights, including the right to a referral to an alternative provider if the beneficiary objects to the religious character of the organization providing services, and (4) add a provision stating that decisions about awards of Federal financial assistance must be free from political interference and made based on merit. These changes will ensure the Department's regulations implement all of the requirements of Executive Order 13279 as amended.

B. Proposed Amendments to DOL Equal Treatment Regulations

DOL proposes to amend its Equal Treatment Regulations at 29 CFR part 2, subpart D to address the areas identified below.

1. Direct and Indirect Federal Financial Assistance

Executive Order 13559 noted that new regulations should distinguish between ''direct'' and ''indirect'' Federal financial assistance because the limitation on explicitly religious activities applies to programs that are supported with ''direct'' Federal financial assistance but does not apply to programs supported with ''indirect'' Federal financial assistance. Executive Order 13559, § 1(c) (amending § 3(b) of Executive Order 13279).

Programs are supported with direct Federal financial assistance when either the government or an intermediary, as identified in these proposed rules, selects a service provider and either purchases services from that provider (*e.g.,* through a contract) or awards funds to that provider to carry out a social service (*e.g.,* through a grant or cooperative agreement). Under these circumstances, there are no intervening steps in which the beneficiary's choice determines the provider's identity.

''Indirect'' Federal financial assistance is distinguishable because it places the choice of service provider in the hands of a beneficiary before the Federal government pays for the cost of that service through a voucher, certificate, or other similar means. For example, the Federal government could choose to allow the beneficiary to secure the needed service on his or her own. Alternatively, a Federal agency, operating under a neutral program of aid, could present each beneficiary or prospective beneficiary with a list of all qualified providers from which the beneficiary could obtain services using a Federal government-provided certificate, *e.g.* through the use of Individual Training Accounts. Either way, the Federal government empowers the beneficiary to choose for himself or herself whether to receive the needed services, including those that contain explicitly religious activities, through a faith-based or other neighborhood organization. The Federal government could then pay for the beneficiary's choice of provider by giving the beneficiary a voucher or similar document. Alternatively, the Federal government could choose to pay the provider directly after asking the beneficiary to indicate his or her choice. *See Freedom From Religion Found.* v.

McCallum, 324 F.3d 880, 882 (7th Cir. 2003).

The Supreme Court has held that if a program meets certain criteria, the government may fund the program if, among other things, it places the benefit in the hands of individuals, who in turn have the freedom to choose the provider to which they take their benefit and ''spend'' it, whether that provider is public or private, non-religious or religious. *See Zelman* v. *Simmons-Harris,* 536 U.S. 639, 652–53 (2002). In these instances, the government does not encourage or promote any explicitly religious programs that may be among the options available to beneficiaries. Notably, the voucher scheme at issue in the *Zelman* decision, which was described by the Court as one of ''true private choice,'' *id.* at 653, was also neutral toward religion and offered beneficiaries adequate secular options.

The Department's Equal Treatment Regulations currently note this distinction between direct and indirect financial assistance at paragraphs (b)(1) and (b)(3) of § 2.33. The current regulations do not, however, provide explicit definitions for the terms ''direct Federal financial assistance'' and ''indirect Federal financial assistance,'' which might help to clarify the distinction. Accordingly, the Department proposes to add definitions of these terms to paragraph (a) of § 2.31, the section containing the definition of certain terms used in the Equal Treatment Regulations. Paragraph (a) defines the term ''*Federal financial assistance.*'' Consistent with Executive Order 13559's mandate to adopt regulations on ''the distinction between 'direct' and 'indirect' Federal financial assistance,''[1] the proposed rule adds language to paragraph (a) indicating that *Federal financial assistance* may be direct or indirect. Proposed paragraph (a)(1) provides a definition for the term ''*direct Federal financial assistance*'' or ''*Federal financial assistance provided directly*'' and defines it to mean that the Government or an intermediary selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via a grant or cooperative agreement). In general, Federal financial assistance will be treated as direct, unless it meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.*

Proposed paragraph (a)(2) provides a definition for the term ''*indirect Federal financial assistance*'' or ''*Federal financial assistance provided indirectly*'' and defines it to mean that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered ''indirect'' when (1) the government funded program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion; (2) the organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and (3) the beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment. Proposed paragraph (a)(3) notes that recipients of sub-awards that receive Federal financial assistance through programs administered by states or other intermediaries are not considered recipients of indirect Federal financial assistance.

2. Inherently Religious Activities

Existing agency regulations and Executive Order 13279 prohibits non-governmental organizations from using direct Federal financial assistance (*e.g.,* government grants, contracts, sub-grants, and subcontracts) for ''inherently religious activities, such as worship, religious instruction, and proselytization.'' The term ''inherently religious'' has proven confusing. In 2006, for example, the Government Accountability Office (GAO) found that, while all 26 of the religious social service providers it interviewed said they understood the prohibition on using direct Federal financial assistance for ''inherently religious activities,'' four of the providers described acting in ways that appeared to violate that rule. GAO, *Faith-Based and Community Initiative: Improvements in Monitoring Grantees and Measuring Performance Could Enhance Accountability,* GAO–06–616, at 34–35 (June 2006) (available at *http://www.gao.gov/new.items/d06616.pdf*).

Further, while the Supreme Court has sometimes used the term ''inherently religious,'' it has not used it to indicate the boundary of what the Government may subsidize with direct Federal financial assistance. If the term is interpreted narrowly, it could permit actions that the Constitution prohibits. On the other hand, one could also argue that the term ''inherently religious'' is too broad rather than too narrow. For example, some might consider their provision of a hot meal to a needy person to be an ''inherently religious'' act when it is undertaken from a sense of religious motivation or obligation, even though it has no overt religious content.

The Supreme Court has determined that the Government cannot subsidize ''a specifically religious activity in an otherwise substantially secular setting.'' *Hunt* v. *McNair,* 413 U.S. 734, 743 (1973). It has also said a direct aid program impermissibly advances religion when the aid results in governmental indoctrination of religion. *See Mitchell* v. *Helms,* 530 U.S. 793, 808 (2000) (Thomas, J., joined by Rehnquist, C.J., Scalia, and Kennedy, JJ., plurality); *id.* at 845 (O'Connor, J., joined by Breyer, J., concurring in the judgment); *Agostini* v. *Felton,* 521 U.S. 203, 223 (1997). This terminology is fairly interpreted to prohibit the Government from directly subsidizing any ''explicitly religious activity,'' including activities that involve overt religious content. Thus, direct Federal financial assistance should not be used to pay for activities such as religious instruction, devotional exercises, worship, proselytizing or evangelism; production or dissemination of devotional guides or other religious materials; or counseling in which counselors introduce religious content. Similarly, direct Federal financial assistance may not be used to pay for equipment or supplies to the extent they are allocated to such activities. Activities that are secular in content, such as serving meals to the needy or using a nonreligious text to teach someone to read, are not considered ''explicitly religious activities'' merely because the provider is religiously motivated to provide those services. Secular activity also includes the study or acknowledgement of religion as a historical or cultural reality.

The Department, therefore, proposes to replace the term ''inherently religious activities'' with the term ''explicitly religious activities'' throughout the Equal Treatment Regulations and to define the latter term as ''including activities that involve overt religious content such as worship, religious instruction, or proselytization.'' These changes in language are consistent with the use of the term ''explicitly religious activities'' in Executive Order 13559 and will provide greater clarity and more closely match constitutional standards as they have been developed in case law.

3. Intermediaries

The Department also proposes to add regulatory language at proposed

[1] Executive Order 11246, § 3(b)(iii), as amended by Executive Order 13559, § 1.75 FR at 71321.

§ 2.33(d) that will clarify the rights and responsibilities of intermediaries. An intermediary is an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. Each intermediary must abide by all statutory and regulatory requirements by, for example, providing any services supported with direct Federal financial assistance in a religiously neutral manner that does not include explicitly religious activities. The intermediary also has the same duties as the government to comply with these rules by, for example, selecting any providers to receive Federal financial assistance in a manner that does not favor or disfavor organizations on the basis of religion or religious belief. While intermediaries may be used to distribute Federal financial assistance to other organizations in some programs, intermediaries remain accountable for the Federal financial assistance they disburse. Accordingly, intermediaries must ensure that any providers to which they disburse Federal financial assistance also comply with these rules. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the statutory and regulatory provisions governing the program.

A State's use of intermediaries does not relieve the State of its traditional responsibility to effectively monitor the actions of such organizations. States are obligated to manage the day-to-day operations of grant- and sub-grant-supported activities to ensure compliance with applicable Federal requirements and performance goals. Moreover, a State's use of intermediaries does not relieve the State of its responsibility to ensure that providers are selected, and deliver services, in a manner consistent with the First Amendment's Establishment Clause.

4. Protections for Beneficiaries

Executive Order 13559 indicates a variety of valuable protections for the religious liberty rights of social service beneficiaries. These protections are aimed at ensuring that Federal financial assistance is not used to coerce or pressure beneficiaries along religious lines, and to make beneficiaries aware of their rights, through appropriate notice, when potentially obtaining services from providers with a religious affiliation.

Both section 2(d) of Executive Order 13279 as amended and the Department's current Equal Treatment Regulations make clear that all organizations that receive Federal financial assistance for the purpose of delivering social services are prohibited from discriminating against beneficiaries or potential beneficiaries of those programs on the basis of religion, a religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Executive Order 13559, § 1(b) (amending § 2(d) of Executive Order 13279); 29 CFR 2.33. Both also state that organizations offering explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction or proselytization) must not use direct Federal financial assistance to subsidize or support those activities, and that any explicitly religious activities must be offered outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards). Executive Order 13559, § 1(b) (amending § 2(f) of Executive Order 13279); 29 CFR 2.33. In other words, to the extent that an organization provides explicitly religious activities, those activities must be offered separately in time or location from programs or services supported with direct Federal financial assistance. And, as noted above, participation in those religious activities must be completely voluntary for beneficiaries of programs supported by direct Federal financial assistance.

To strengthen the protections provided to beneficiaries, Executive Order 13559 requires that organizations administering a program that is supported by direct Federal financial assistance must give written notice in a manner prescribed by the Department to beneficiaries and prospective beneficiaries of their religious liberty rights, including the right to be referred to an alternative provider when available. If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, the social service program must refer the beneficiary to an alternative provider. Accordingly, the proposed rule supplements existing beneficiary protections in the Equal Treatment Regulations by adding two new sections to the regulations—one addressing the written notice requirement at proposed § 2.34 and the other addressing the referral requirement at proposed § 2.35. In light of the addition of these two new sections, the existing sections discussing the application to State and local funds at § 2.34, the effect of DOL support on title VII employment nondiscrimination requirements and on other existing statutes at § 2.35, and the status of nonprofit organizations at § 2.36 are redesignated as §§ 2.36, 2.37, and 2.38 respectively.

a. Written Notice

Executive Order 13279, as amended by Executive Order 13559, requires that the Secretary of Labor, among other agency heads, establish policies and procedures designed to ensure that each beneficiary of a social service program receives written notice of their religious liberty rights. Executive Order 13279, § 2(h)(ii) as amended by Executive Order 13559, § 1.75 FR at 71320–21. Consistent with this mandate, proposed § 2.34 requires DOL social service providers with a religious affiliation to give beneficiaries written notice of their religious liberty rights when seeking or obtaining services supported by direct DOL financial assistance. The notice is set forth in proposed paragraph (a) and informs beneficiaries that:

(1) the organization may not discriminate against beneficiaries on the basis of religion or religious belief;

(2) the organization may not require beneficiaries to attend or participate in any explicitly religious activities, and any participation by beneficiaries in such activities must be purely voluntary;

(3) the organization must separate out in time or location any explicitly religious activities from activities supported with direct DOL support;

(4) if a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection; and

(5) beneficiaries may report violations of these enumerated religious liberty rights to the Civil Rights Center, Room N–4123, 200 Constitution Avenue NW., Washington, DC 20210, *CivilRightsCenter@dol.gov*.

The purpose of the notice is to make beneficiaries aware of their religious liberty rights and helps to ensure that beneficiaries are not coerced or pressured along religious lines in order to obtain DOL-supported social service programs. Paragraph (a) provides that DOL social service providers may post and distribute exact duplicate copies of the notice, including through electronic means. Paragraph (b) requires that the notice be given to beneficiaries before they enroll in the program or receive

services from such programs. However, when the nature of the service provided—such as a one-time emergency hotline call—or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, DOL social service providers are to advise beneficiaries of their protections at the earliest available opportunity.

b. Referral Requirements

Proposed § 2.35 implements Executive Order 13559's requirement that a beneficiary be referred to an alternative provider when he or she objects to the religious character of an organization that provides services under the federally-financed program. Executive Order 11246, § 2(h)(i) as amended by Executive Order 13559, § 1. 75 FR at 71320. Accordingly, paragraph (a) of proposed § 2.35 provides that, if a beneficiary or prospective beneficiary of a social service program supported by direct Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection.

Paragraph (b) states that a referral may be made to another religiously affiliated provider, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider that offers the needed services is available, then a referral must be made to that provider.

Paragraph (c) of proposed § 2.35 specifies that, except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional clients. If a Federally-supported alternative provider meets these requirements and is acceptable to the beneficiary, a referral should be made to that provider. If, however, there is no Federally-supported alternative provider that meets these requirements and is acceptable to the beneficiary, a referral should be made to an alternative provider that does not receive Federal financial assistance but does meet these requirements and is acceptable to the beneficiary.

If an organization is unable to identify an alternative provider, the organization is required under paragraph (d) of proposed § 2.35 to notify the awarding entity and that entity is to determine whether there is any other suitable alternative provider to which the beneficiary may be referred. Paragraph (e) notes that a DOL social service intermediary provider may request assistance from the Department in identifying an alternative service provider. Further, the executive order and the proposed rule require the relevant government agency to ensure that appropriate and timely referrals are made to an appropriate provider, and that referrals are made in a manner consistent with applicable privacy laws and regulations. It must be noted, however, that in some instances, the awarding entity may also be unable to identify a suitable alternative provider. The Department requests specific comment on proposed § 2.35 and the referral requirement.

5. Political or Religious Affiliation

Consistent with § 2(j) of Executive Order 11246 as amended by § 1 of Executive Order 13559, the proposed rule adds a new provision at proposed § 2.39 to require that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made based on merit, not on the basis of religion or religious belief. This requirement will increase confidence that the rules applicable to federally funded partnerships are actually being observed and that decisions about government grants are made on the merits of proposals, not on political or religious considerations. The awarding entity must instruct participants in the awarding process to refrain from taking religious affiliations or non-religious affiliations into account in this process; *i.e.,* an organization should not receive favorable or unfavorable marks merely because it is affiliated or unaffiliated with a religious body, or related or unrelated to a specific religion. When selecting reviewers, the awarding entity should never ask about religious affiliation or take such matters into account. But it should encourage religious, political and professional diversity among reviewers by advertising for these positions in a wide variety of venues.

6. Miscellaneous Provisions

The proposed rule would also modify the following provisions:

a. Definition of DOL Social Service Intermediary Provider

The proposed rule would modify the definition of the term ''DOL social service intermediary provider'' in § 2.31(f) by adding that the term encompasses non-governmental organizations. This change clarifies that non-governmental organizations have the same obligations as governmental intermediary providers, such as state agencies.

b. Protection of Religious Organizations' Independence

Consistent with Section 2(g) of Executive Order 13559, the proposed rule would modify § 2.32(b) by adding the term ''development'' to indicate that the development of religious beliefs is protected for faith-based organizations that apply for, or participate in, a social service program supported with Federal financial assistance.

III. Regulatory Procedures

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Department believes that the only provisions of this proposed rule likely to impose costs on the regulated community are the requirements that DOL social service providers with a religious affiliation: (1) Give beneficiaries a written notice informing them of their religious liberty rights when seeking or obtaining services supported by direct DOL financial

assistance, (2) at the beneficiary's request, make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection, and (3) document such action. To minimize compliance costs on DOL social service providers, the proposed rule provides the language of the notice directly within the proposed rule.

An estimate of the cost of providing this notice and referring beneficiaries is discussed in the Paperwork Reduction Act section of this proposed rule. To minimize compliance costs and allow maximum flexibility in implementation, the Department has elected not to establish a specific format for the referrals required when beneficiaries request an alternative provider. To estimate the cost of the referral provision, the Department would need to know the number of religious direct social service providers funded by DOL annually, the number of beneficiaries who would ask for a referral, the costs of making the referral and notifying relevant parties of the referral.

Unfortunately, at this time, there is no known source of information to quantify precisely the numbers or proportions of program beneficiaries who will request referral to alternative providers. We are not aware of any instances in which a beneficiary of a program of the Department has objected to receiving services from a faith-based organization. There is a possibility that because of this rule, when beneficiaries start receiving notices of their right to request referral to an alternative service provider, more of them may raise objections. However, our estimate of the number of referrals is also informed by the experience of the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), which administers beneficiary substance abuse service programs under titles V and XIX of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.* and 42 U.S.C. 300x–21 *et seq.* Specifically, 42 U.S.C. 290kk–1 and 300x–65, require faith-based organizations that receive assistance under the Act to provide notice to beneficiaries of their right under statute to request an alternative service provider. Recipients of assistance must also report all referrals to the appropriate federal, state, or local government agency that administers the SAMHSA program. To date, SAMHSA has not received any reports of referral by recipients or subrecipients. The Department invites interested parties to provide data on which to base estimates of the number of beneficiaries who will request referral to an alternative service provider and the attendant compliance cost service providers may face.

Notwithstanding the absence of concrete data, the Department believes that this proposed rule is not significant within the meaning of the Executive Order because the annual costs associated with complying with the written notice and referral requirements will not approach $100 million.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. As described above, the Department has made every effort to ensure that the disclosure and referral requirements of the proposed rule impose minimum burden and allow maximum flexibility in implementation by providing in the rule the notice for providers to give beneficiaries informing them of their rights and by not proscribing a specific format for making referrals. The Department estimates it will take no more than two minutes for providers to print, duplicate, and distribute an adequate number of disclosure notices for potential beneficiaries. Using the May 2013 Bureau of Labor Statistics hourly mean wage for a Training and Development Specialist of $29.22 results in an estimate of the labor cost per service provider of preparing the notice of approximately $0.97. In addition, the Department estimates an upper limit of $100 for the annual cost of materials (paper, ink, toner) to print multiple copies of the notices. Because these costs will be borne by every small service provider with a religious affiliation, the Department believes that a substantial number of these small entities may be affected by this provision. However, the Department does not believe that a compliance cost of less than $200 per provider per year is a significant percentage of a provider's total revenue. In addition, we note that after the first year, the labor cost associated with compliance will likely decrease significantly because small service providers will be familiar with the requirements.

The rule will also require religious social service providers, at the beneficiary's request, to make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. If an organization is unable to identify an alternative provider, the organization is required to notify the awarding entity and that entity is to determine whether there is any other suitable alternative provider to which the beneficiary may be referred. A DOL social service intermediary may request assistance from the Department in identifying an alternative service provider. The Department estimates that each referral request will require no more than two hours of a Training and Development Specialist's time to process at a labor cost of $29.22 per hour. Although we do not have any way to determine the number of referrals that will occur in any one year, the Department does not believe that referral costs will be appreciable for small service providers. The Department invites interested parties to provide data on which we can formulate better estimates of the compliance costs associated with the disclosure and referral requirements of this proposed rule.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512). This rule proposes a new information collection.

Section 2.34 would impose requirements on religious social service providers to give beneficiaries (or potential beneficiaries) a standardized notice instructing (potential) beneficiaries of their rights and requiring an occasional written response that may impose a burden under the PRA. The Department has determined this notice is not a collection of information subject to OMB clearance under the PRA because the Federal Government has provided the exact text that a provider must use. *See* 5 CFR 1320.3(c)(2). The beneficiary's response, however, is subject to OMB clearance under the PRA. Care has been taken to limit the information to simply obtaining minimal identifying information and providing check boxes for material responses.

Section 2.35 would require that when a beneficiary or prospective beneficiary of a social service program supported by direct DOL financial assistance objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider. The referral process could entail collections of information subject to PRA clearance, specifically, informing the beneficiary of a referral to an alternative provider. If an organization is unable to identify an alternative provider, the organization is required under paragraph (d) of proposed § 2.35 to notify the awarding entity and that awarding entity is to determine whether there is any other suitable alternative provider to which the beneficiary may be referred. Paragraph (e) notes that a DOL social service intermediary provider may request assistance from the Department in identifying an alternative service provider. Further, the executive order and the proposed rule require the relevant government agency to ensure that appropriate and timely referrals are made to an appropriate provider, and that referrals are made in a manner consistent with applicable privacy laws and regulations.

Religious social service providers that would be subject to these requirements would have to keep records to show that they have met the referral requirements in the proposed regulations. (The religious social service provider will be required to complete the referral form, notify the awarding entity, and maintain information only if a beneficiary requests a referral to an alternate provider.) In the case of paper notices, religious social service providers could meet the record-keeping requirements in these proposed regulations by keeping the bottom portion of the notice. For those religious social service providers that provide notice electronically, the notices would have to include a means for beneficiaries to request an alternative placement—and follow-up, if desired—that is recorded so the religious social service providers may retain evidence of compliance with these proposed regulations. We do not include an estimate of the burden of maintaining the records needed to demonstrate compliance with the requirements imposed on religious social service providers. The record-keeping burden that these proposed regulations would add is so small that, under most programs, it would not measurably increase the burden that already exists under current program and administrative requirements. If, due to the unique nature of a particular program, the record-keeping burden associated with these proposed regulations is large enough to be measurable, that burden will be calculated under the record-keeping and reporting requirements of the affected program and identified in information collection requests that are submitted to OMB for PRA approval. Therefore, we have not included any estimate of record-keeping burden in this PRA analysis.

Concurrent with publication of this NPRM, the Department is submitting an information collection request (ICR) to the OMB to obtain PRA approval for the proposed information collection requirements. A copy of this ICR with applicable supporting documentation including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

As part of its continuing effort to reduce paperwork burdens, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on collections of information in accordance with the PRA. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A comment to the Department about the information collection requirements may be submitted in the same way as any other comment for this rulemaking. In addition to having an opportunity to file comments with the Department, written comments under the PRA about the information collection requirements may be addressed to the OMB. Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the DOL–OS, Office of Management and Budget, Room 10235, Washington, DC 20503. You can also submit comments to OMB by email at *OIRA_submission@omb.eop.gov*. The OMB will consider all written comments it receives within 30 days of publication of this information collection.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of IT (*e.g.,* permitting electronic submission of responses.

The burden for the information collection provisions of this NPRM can be summarized as follows:

Agency: DOL–OS.

Title of Collection: Grant Beneficiary Referrals.

OMB ICR Reference Number Control Number: 1291–0NEW.

Affected Public: State and local governments; Private Sector—not-for-profit institutions; and Individuals or Households.

Frequency of Response: On occasion.

Total Estimated Number of Respondents: 38.

Total Estimated Number of Responses: 38.

Total Estimated Annual Burden Hours: 9.

Total Estimated Other Costs: $0.

Executive Order 13132

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct

effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This proposed rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order 13132. Any action taken by a State as a result of the proposed rule would be at its own discretion as the rule imposes no requirements.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined this proposed rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Effect on Family Life

The Department certifies that this proposed rule has been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), for its effect on family well-being. It will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this proposed rule does not adversely impact family well-being.

List of Subjects in 29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees, Religious Discrimination.

For the reasons set forth in the preamble, the Department of Labor amends part 2 of title 29 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL REGULATIONS

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

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

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

■ 2. Amend § 2.31 by revising paragraphs (a) and (f) to read as follows:

§ 2.31 Definitions.

* * * * *

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

(1) The term *direct Federal financial assistance* or *Federal financial assistance provided directly* means that the Government or a DOL social service intermediary provider under this part selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.*

(2) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered *indirect* when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion;

(ii) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

(3) The recipient of sub-awards received through programs administered by States or other intermediaries that are themselves recipients of Federal financial assistance (*e.g.,* local areas that receive within-state allocations to provide workforce services under title I of the Workforce Innovation and Opportunity Act) are not considered recipients of *indirect Federal financial assistance* or recipients of *Federal financial assistance provided indirectly* as those terms are used in Executive Order 13559. These recipients of sub-awards are considered recipients of direct Federal financial assistance.

* * * * *

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

■ 3. Amend § 2.32 by revising paragraph (b) introductory text and paragraph (c) to read as follows:

§ 2.32 Equal participation of religious organizations.

* * * * *

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

* * * * *

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

DOL-supported activities in accordance with all applicable legal and programmatic requirements, including those prohibiting the use of direct DOL support for explicitly religious activities (including activities that involve overt religious content, such as worship, religious instruction, or proselytization). A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, have a religious character or affiliation, or lack a religious component.

■ 4. Amend § 2.33 by revising paragraph (b)(1) and paragraph (b)(3) introductory text, and adding a new paragraph (d) to read as follows:

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

* * * * *

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

* * *

(3) Notwithstanding the requirements of paragraph (b)(1) of this section, and to the extent otherwise permitted by Federal law (including constitutional requirements), direct DOL support may be used to support explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), and such activities need not be provided separately in time or location from other DOL-supported activities, under the following circumstances:

* * *

(d) If an intermediary, acting under a contract, grant, or other agreement with the Federal government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal government, the intermediary must ensure compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance, by the recipient of a contract, grant or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

* * * * *

§§ 2.34, 2.35, and 2.36 [Redesignated as §§ 2.36, 2.37, and 2.38]

■ 5. Redesignate §§ 2.34, 2.35, and 2.36 as § 2.36, § 2.37, and § 2.38, respectively.

■ 6. Add new § 2.34 and § 2.35 to subpart D to read as follows:

§ 2.34 Beneficiary protections: Written notice.

(a) *Contents.* Religious organizations providing social services to beneficiaries under a DOL program supported by direct Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner prescribed by DOL, and state that:

(1) The organization may not discriminate against beneficiaries on the basis of religion or religious belief;

(2) The organization may not require beneficiaries to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate out in time or location any privately-funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) If a beneficiary objects to the religious character of the organization, the organization must make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. The organization cannot guarantee, however, that in every instance, an alternative provider will be available; and

(5) Beneficiaries may report violations of these protections to the U.S. Department of Labor (or, the intermediary, if applicable). The required language of the notice is set forth below and may be downloaded from the Center for Faith-Based and Neighborhood Partnerships' Web site at *http://www.dol.gov/cfbnp.* DOL social service providers may post and distribute exact duplicate copies of the notice, including through electronic means:

NOTICE OF BENEFICIARY RELIGIOUS LIBERTY PROTECTIONS

Name of Organization:

Name of Program:

Contact information for Program Staff (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion or religious belief;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) We must separate out in time or location any privately-funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) If you object to the religious character of an organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection. We cannot guarantee, however, that in every instance, an alternative provider will be available; and

(5) You may report violations of these protections to the U.S. Department of Labor's Civil Rights Center, 200 Constitution Ave. NW., Room N–4123, Washington, DC 20210, or by email to *CivilRightsCenter@dol.gov.* This written notice must be given to you prior to the

time you enroll in the program or receive services from such programs, unless the nature of the service provided or urgent circumstances makes it impracticable to provide such notice in advance of the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

BENEFICARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

( ) I want to be referred to another service provider. If you checked above that you wish to be referred to another service provider, please check one of the following:

( ) Please follow up with me or the other service provider.

Name:

Best way to reach me (phone/address/email):

( ) Please do not follow up.

(b) *Timing of notice.* This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, DOL social service providers must advise beneficiaries of their protections at the earliest available opportunity.

§ 2.35 Beneficiary protections: Referral requirements.

(a) If a beneficiary or prospective beneficiary of a social service program supported by direct DOL financial assistance objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection.

(b) A referral may be made to another religious organization, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(c) Except for services provided by telephone, internet, or similar means, the referral must be to an alternative Federally-financed provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by that organization. The alternative provider also must have the capacity to accept additional clients. Where there is no Federally-financed alternative provider available, a referral should be made to an alternative provider that does not receive Federal financial assistance but does meet these requirements and is acceptable to the beneficiary.

(d) When the organization makes a referral to an alternative provider, or when the organization determines that it is unable to identify an alternative provider, the organization shall notify the awarding entity. If the organization is unable to identify an alternative provider, the awarding entity shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred.

(e) An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from DOL.

■ 7. Add new § 2.39 to subpart D to read as follows:

§ 2.39 Political or religious affiliation.

Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief.

Dated: February 12, 2015.

Thomas E. Perez,

Secretary of Labor.

[FR Doc. 2015–18260 Filed 8–5–15; 8:45 am]

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