

§2.34

grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the DOL social service intermediary provider 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 DOL social service intermediary provider is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

[69 FR 41891, July 12, 2004, as amended at 81 FR 19421, Apr. 4, 2016]

§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 a beneficiary or prospective beneficiary on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(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 bene-

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fiary 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 or prospective beneficiaries may report violations of these protections to, or file a written complaint of any denials of services or benefits by an organization with, the U.S. Department of Labor's Civil Rights Center. The required language of the notice is set forth in appendix A to these regulations and may be downloaded from the Civil Rights Center's Web site at <http://www.dol.gov/oasam/programs/crc> or at 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.

(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.

(c) *Applicability.* The obligations in this subsection apply only to religious organizations providing services under social service programs administered in the United States.

[81 FR 19423, Apr. 4, 2016]

§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 or prospective beneficiary to an alternative provider to which the beneficiary or 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 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.

(d) When the organization makes a referral to an alternative provider, the organization shall maintain a record of that referral for review by the awarding entity. When the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify and maintain a record for review by 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) A DOL social service intermediary provider that receives a request for assistance in identifying an alternative provider may request assistance from DOL.

(f) The obligations in this section apply only to religious organizations providing services under social service programs administered in the United States.

[81 FR 19423, Apr. 4, 2016]

§ 2.36 Application to State and local funds.

If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, then the provisions of this subpart apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal assistance. State funds

that are contributed pursuant to the requirements of a matching or grant agreement are considered to be commingled funds.

[69 FR 41891, July 12, 2004. Redesignated at 81 FR 19423, Apr. 4, 2016]

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

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in § 702(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, is not forfeited when the organization receives direct or indirect DOL support. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. Accordingly, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program official or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4123, Washington, DC 20210, (202) 693-6500. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

[69 FR 41891, July 12, 2004. Redesignated at 81 FR 19423, Apr. 4, 2016]

§ 2.38 Status of nonprofit organizations.

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