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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 19

[Docket No. DHS-2019-0049]

RIN 1601-AA93

Equal Participation of Faith-Based Organizations in DHS's Programs and Activities: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend Department of Homeland Security (Department or DHS) regulations to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, to clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and to eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of Federal law, including the First Amendment to the Constitution, and the Religious Freedom Restoration Act.

DATES: Comments must be received by DHS on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments identified by docket DHS-2019-0049. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Peter Mina, Deputy Officer for Programs and Compliance, Office for Civil Rights and Civil Liberties, Department of Homeland Security, Washington, DC 20528, 202-401-1474 (phone), 202-401-0470 (TTY).

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

DHS encourages you to submit comments through the Federal eRulemaking Portal at https://www.regulations.gov. If you cannot submit your material by using https://www.regulations.gov, contact the person in the FOR FURTHER INFORMATION CONTACT section of this notice of proposed rulemaking for alternate instructions. Also, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

All comments received are considered part of the public record and made available for public inspection online at http://www.regulations.gov. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

II. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that

"private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field" in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives, with primary responsibility to "establish policies, priorities, and objectives for the Federal Government's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law."

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (Dec. 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and 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 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for 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 articulated in the Order.

Consistent with Executive Order 13279, the Department issued a notice of proposed rulemaking, *Nondiscrimination in Matters Pertaining to Faith-Based Organizations*, 73 FR 2187 (Jan. 14, 2008); however, the Department did not issue a final

rule related to the participation of faith-based organizations in the Department's programs prior to 2016.

President Obama maintained President Bush's program but modified it in certain respects. 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). This Executive Order 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 it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (Nov. 17, 2010). Executive Order 13559 made various changes to Executive Order 13279 including: making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider's religious character; adding a provision requiring that the faith-based provider give notice of potential referral to the potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service

providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, defining "indirect assistance" as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary.

Unlike most of the other agencies affected by the Executive Orders, the Department did not issue final regulations related to the participation of faith-based organizations in the Department programs prior to 2016. In 2015, the Department issued a supplemental notice of proposed rulemaking (SNPRM), *Nondiscrimination in Matters Pertaining to Faith-Based Organizations,* 80 FR 47284 (Aug. 6, 2015), in concert with other agencies. The SNPRM addressed comments received in response to the 2008 notice of proposed rulemaking and proposed additional changes to address Executive Order 13559.

In 2016, the Department in concert with eight other Federal agencies, published its final rule, *Nondiscrimination in Matters Pertaining to Faith-based Organizations*, 81 FR 19353 (April 4, 2016), codified at 6 CFR Part 19, which established regulations to implement Executive Order 13279, as amended by Executive Order 13559. The rules required not only that faith-based providers give the notice of the right to an alternative provider specified in Executive Order 13559, but also required faith-based providers, but not other providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious

activities must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations.

Following issuance of the final rule in 2016, the Department provided guidance and resources to assist faith-based and other neighborhood organizations receiving financial assistance to support social service programs, as well as intermediaries (such as State administering agencies), in understanding and complying with the regulation, including but not limited to model notices of beneficiary rights and beneficiary referral request forms.

President Trump has given new direction to the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82 FR 21675 (May 4, 2017). Executive Order 13798 states that "[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections." It directed the Attorney General to "issue guidance interpreting religious liberty protections in Federal law."

Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, "Federal Law Protections for Religious Liberty," 82 FR 49668 (Oct. 26, 2017) (the "Attorney General's Memorandum on Religious Liberty"). The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing government-funded social services, and that

"government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization."

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the "White House Office of Faith-Based and Neighborhood Partnerships" in those previous Orders to the "White House Faith and Opportunity Initiative;" changed the way that initiative is to operate; directed departments and agencies with "Centers for Faith-Based and Community Initiatives" to change those names to "Centers for Faith and Opportunity Initiatives;" and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a "Liaison for Faith and Opportunity Initiatives." Executive Order 13831 also eliminated the alternative provider requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider and Alternative Provider Notice Requirement

Executive Order 13831 deleted the requirement in Executive Order 13559 that faith-based social services providers refer beneficiaries who object to receiving services from them to an alternative provider. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279, entitled "Fundamental Principles," by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: "If a beneficiary or a 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, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider." Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary "receives written notice of the protections *set forth in this subsection* prior to enrolling on or receiving services from such program" (emphasis added). The reference to "this subsection" rather than to "this Section" indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not all of the protections in section 2. The Department has revised its regulations to conform to these provisions. 6 CFR 19.6, 19.7.

The alternative provider provisions of Executive Order 13559, which Executive Order 13831 removed, were not required by the Constitution or any applicable law. Indeed, they are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations and with the Attorney General's Memorandum on Religious Liberty.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993) (alteration is original)): "The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" The Court in *Trinity Lutheran* added: "[T]his Court has repeatedly confirmed

that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.'" *Id*. at 2019 (quoting *McDaniel v. Paty*, 435 U.S. 618 (1978) (plurality opinion) (internal citations omitted); *see also Mitchell v. Helms*, 530 U.S. 793, 827 (2000) (plurality opinion) ("The religious nature of a recipient should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose."); Attorney General's Memorandum on Religious Liberty, principle 6 ("Government may not target religious individuals or entities for special disabilities based on their religion.").

Applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.* Under RFRA, where the government substantially burdens an entity's exercise of religion, the government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb-1(b). The *World Vision OLC* opinion makes clear that when a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. *See* Application of the

Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act, 31 O.L.C. 162, 169–71, 174-83 (June 29, 2007).

Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. See *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 720-26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of the alternative provider requirement, Part 19 as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers

of services funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in any explicitly religious activities must be voluntary and separate in time or space from activities funded with direct Federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, the Orders clearly set forth the underlying requirements of nondiscrimination, voluntariness, the holding of religious activities separate in time or place from any federally funded activity, and the right to file complaints of violations. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive. *See, e.g.*, 28 CFR 38.7. There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell v. Helms*, 530 U.S. 793, 856-57 (2000) (O'Connor, J., concurring in judgment) (noting that in *Tilton v. Richardson*, 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes "demonstrate[d] our willingness to presume that the university would abide by the secular content restriction."). There is thus no need for prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, "the distinction between 'direct' and 'indirect' Federal financial assistance[.]" 75 FR 71319, 71321 (Nov. 22, 2010). Following issuance of the Working Group's report, a final rule was issued to amend existing regulations to make that distinction, and to clarify that "organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs," need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (Apr. 4, 2016). In so doing, the final rule attempted to accurately capture the definition of "indirect" aid that the U.S. Supreme Court employed in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). *See* 81 FR 19355, 19361–62 (Apr. 4, 2016).

In *Zelman*, the Court concluded that a government funding program is "one of true private choice"—*i.e.*, an indirect-aid program—where there is "no evidence that the State deliberately skewed incentives toward religious" providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance "directly to a broad class of individuals defined without reference to religion" (*i.e.*, parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid "on the basis of neutral, secular criteria that neither favor nor disfavor religion"; and it made aid available "to both religious and secular beneficiaries on a nondiscriminatory basis." *Id.* at 653–54 (quotation marks omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition

of indirect aid hinge on the "preponderance of religiously affiliated private" providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, "would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in" others. *Id.* at 656–58. In short, the Court concluded that "[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time, most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider]." *Id.* at 658.

The final rule issued after the Working Group's report included, among its criteria for indirect Federal financial assistance, a requirement that beneficiaries have "at least one adequate secular option" for use of the Federal financial assistance. *See* 81 FR 19355, 19407–19426 (Apr. 4, 2016). In other words, the rule amended regulations to make the definition of "indirect" aid hinge on the availability of secular providers. A regulation defining "indirect Federal financial assistance" to require the availability of secular providers is in tension with the Supreme Court's choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of "indirect" aid more closely into line with the Supreme Court's definition in *Zelman*.

Overview of proposed rule

The Department proposes to amend Part 19 to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as RFRA; Executive Order 13279, as

amended by Executive Orders 13559 and 13831, and the Attorney General's Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend Part 19 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social services providers refer beneficiaries objecting to receiving services from them to an alternative provider.

This proposed rule would also make clear that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

This proposed rule would additionally require that the Department's notices or announcements of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding. The language would clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its

independence from the government and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution.

Finally, the proposed rule would directly refer to the definition of "religious exercise" incorporated in RFRA and would amend the definition of "indirect Federal Financial assistance" to align more closely with the Supreme Court's definition in *Zelman*.

Explanations for proposed amendments to 6 CFR Part 19

§ 19.2 Definitions.

Section 19.2 "Direct Federal financial assistance or Federal financial assistance provided directly" is proposed to be changed in order to provide clarity.

Section 19.2 "Financial assistance" is proposed to be changed in accordance with Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002).

Section 19.2 "Indirect Federal financial assistance or Federal financial assistance provided indirectly" (2) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align the text more closely with the First Amendment. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

A new definition of "religious exercise" is proposed to be added to Section 19.2 to explain that such term has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A)," thereby aligning the text with the definition used RFRA and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc-5(7)(A).

See, e.g., principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

Section 19.3(a) is proposed to be changed in order to align it more closely with RFRA by recognizing that a reasonable accommodation may be appropriate or required for faith-based organizations participating in DHS social service programs. *See, e.g.*, principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

Section 19.3(b) is proposed to be changed to align the text more closely with the First Amendment and with RFRA by recognizing that the government may not discriminate for or against an organization because of that organization's religious exercise any more than it can do so based on the organization's religious character or affiliation. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017)); principles 2, 3, 5–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018). It also will require certain notices or announcements of award opportunities, awards, or contracts.

Section 19.3(e) is proposed to be changed in order to clarify the text by eliminating extraneous language and to align it more closely with RFRA by recognizing the possibility of a reasonable religious accommodation. *See, e.g.*, principles 6, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162 (2007) (World Vision Opinion). To be reasonable, of course, any such accommodation must comply with the applicable requirements of federal law, including the Establishment Clause.

Section 19.3(f) is proposed to be added in order to align the text more closely with the First Amendment and with RFRA by recognizing that faith-based providers shall not be required to provide notices or assurances where they are not required of non-faith-based providers. *See, e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.4 Explicitly religious activities.

Section 19.4(b) is proposed to be changed in order to clarify the text by eliminating extraneous language, and to align it more closely with Exec. Order No. 13559, 75 FR 71319 (Nov. 22, 2010). It is not clear what import the requirement that explicitly religious activities be "[c]learly distinct from programs specifically supported by direct financial assistance" would have given the requirement that they must be offered separately, in time or location, from the programs, activities, or services

supported by direct DHS financial assistance. DHS accordingly thinks it better to simply align the text with the requirements in the Executive Order.

Section 19.4(c) is proposed to be changed in order to clarify the text and align it more closely with the First Amendment and with RFRA by once again recognizing the possibility of a reasonable accommodation for faith-based organizations participating in DHS social service programs. *See, e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 5, 6, 7, 8, 10–15, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.5 Nondiscrimination requirements.

Section 19.5 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by making clear that an organization receiving indirect financial assistance is not required to make the attendance requirements of its program optional for a beneficiary who has chosen to expend indirect aid on that program. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)); principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§ 19.6 How to prove nonprofit status.

Section 19.6 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by deleting the notice requirement. *See, e.g.*, *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order

No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018). In its place, DHS is inserting a new provision that identifies how nonprofit status may be determined when such status is required for participation in its programs. This new provision includes an accommodates for organizations that would qualify as 501(c)(3) nonprofit organizations but that have a sincere religious objection to so registering, allowing such organizations to provide evidence that they would so qualify. If an entity has a sincerely-held religious belief that it cannot apply for status as a 501(c)(3) tax-exempt entity, it may provide evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under the Department's criteria.

§ 19.7 Beneficiary protections: Referral requirements.

Section 19.7 is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by eliminating the referral requirement. *See, e.g.*, *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

§ 19.8 Independence of faith-based organizations.

Section 19.8 is proposed to be changed in order to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA by providing more detail about the autonomy from government that a faith-based

organization retains while participating in government programming. *See, e.g.*, Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

§19.11 Nondiscrimination among faith-based organizations.

Section 19.11 is proposed to be added in order to align the text more closely with the First Amendment by making clear that these provisions relating to nondiscrimination toward faith-based organizations should not be construed to advantage or disadvantage historically recognized religions or sects over other religions or sects. *See, e.g.*, *Larson v. Valente*, 456 U.S. 228 (1982); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (Oct. 26, 2017).

Appendix A and Appendix B

The Department proposes that Appendix A be changed and that Appendix B be added to align the text more closely with the First Amendment and with RFRA by deleting the notice and referral requirements that solely burdened faith-based organizations and instead requiring notices of the terms on which faith-based organizations may generally participate in DHS funded programs. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017)); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (Dec. 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (Nov. 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

III. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a regulation that may

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, 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 an "economically significant" regulation);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." *Id*. OIRA of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes." Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, OIRA, Re: Executive Order 13563, "Improving Regulation and Regulatory Review," at 1 (Feb. 2, 2011), available at: https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf

The Department is issuing this proposed regulation upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that the proposed regulation is consistent with the principles in Executive Order 13563. It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations. The Department has determined in addition that

this proposed action would result in benefits to beneficiaries, described in more detail below.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559, and those determined to be necessary for administering the Department's programs and activities. For example, the Department recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential social service provider. The Department invites comment on any information that it could use to quantify this potential cost. The Department also notes a quantifiable cost savings of the removal of the notice and referral requirements, which the Department previously estimated as imposing a cost of no more than $200 per organization per year. 81 FR 19379 (Apr. 4, 2016). The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby accurately quantify the cost savings of removing these requirements.

In terms of benefits, the Department recognizes a non-quantified benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran*. The Department also recognizes a non-quantified benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the Federal Government. Beneficiaries may also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental involvement.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled "Reducing Regulation and Controlling Regulatory Costs," was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's interim guidance, issued on April 5, 2017, https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-

regulation explains that for Fiscal Year 2017 the above requirements only apply to each new "significant regulatory action that imposes costs." This proposed rule is expected to be an EO 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on

a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal

interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments with the suggestions.

Paperwork Reduction Act

This proposed rule does not contain any new or revised "collection[s] of information" as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq*.

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that "establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability." Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 6 CFR Part 19

Civil rights, Government contracts, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, DHS proposes to revise part 19 of chapter I of Title 6 of the Code of Federal Regulations to read as follows:

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 107-296; E.O. 13279, 67 FR 77141; E.O. 13403, 71 FR 28543; E.O. 13498, 74 FR 6533; E.O. 13559, 75 FR 71319; and E.O. 13831, 83 FR 20715.

2. Amend § 19.2 by:

a. Revising the definition of "Direct Federal financial assistance or Federal financial assistance provided directly".

b. Amending the definition of "Financial assistance" by adding a sentence to the end of the definition.

c. Revising the definition of "Indirect Federal financial assistance or Federal financial assistance provided indirectly".

d. Adding the definitions "Intermediary" and "Religious exercise" in alphabetical order.

The revisions and additions read as follows:

§ 19.2 Definitions.

* * * * *

Direct Federal financial assistance or Federal financial assistance provided directly means financial assistance received by an entity selected by the government or an intermediary (under this part) to carry out a service (e.g., by contract, grant, or cooperative agreement). References to "Federal financial assistance" will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of "indirect Federal financial assistance" or "Federal financial assistance provided indirectly".

* * * * *

Financial assistance ***

Financial assistance does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.

Indirect Federal financial assistance or Federal financial assistance provided indirectly means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is considered "indirect" when:

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

(2) The organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

* * * * *

Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).

3. Amend § 19.3 by:

a. In paragraph (a), remove "other organization," and in its place "other organization and considering any religious accommodations appropriate under the Constitution or other provisions of federal law, including but not limited to 42 U.S.C.

2000bb et seq., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment ””

b. In paragraph (b), remove “character, or affiliation.” and in its place “character, affiliation, or exercise. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendices A and B, respectively, to this part.”.

c. Revise paragraph (e)

d. Add paragraph (f).

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

* * * * *

(e) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, subject to any reasonable religious accommodation, and other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or an intermediary in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious exercise or affiliation.

* * * * *

(f) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by DHS or an intermediary in administering financial assistance from DHS shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

4. Amend § 19.4 by revising paragraphs (b) and (c) to read as follows:

§ 19.4 Explicitly religious activities.

* * * * *

(b) Organizations receiving direct financial assistance from DHS for social service programs are free to engage in explicitly religious activities, but such activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from DHS, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(c) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, subject to any religious accommodations appropriate under the Constitution or other provisions of federal law, including but not limited to 42 U.S.C. 2000bb et seq., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment reasonable religious accommodation, and in accordance with all other applicable requirements governing the conduct of DHS-

funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or a State or local government in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious exercise or affiliation.

§ 19.5 [Amended]

5. Amend § 19.5 by removing "organization's program." and adding in its place "organization's program and may require attendance at all activities that are fundamental to the program.".

6. Revise § 19.6 to read as follows:

§ 19.6 How to prove nonprofit status.

In general, DHS does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under DHS social service programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate DHS program

office to determine the scope of any applicable requirements. In DHS social service programs in which an applicant for funding must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(a) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(b) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(1) The organization is a nonprofit organization operating within the State; and

(2) No part of its net earnings may benefit any private shareholder or individual;

(c) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(d) Any item described in paragraphs (a) through (c) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(e) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (a) through (d) of this section.

§ 19.7 [Removed and Reserved]

7. Remove and reserve § 19.7:

8. Revise § 19.8 to read as follows:

§ 19.8 Independence of faith-based organizations.

(a) A faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments; and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance contrary to § 19.4.

(b) Faith-based organizations may use space in their facilities to provide social services using financial assistance from DHS without removing, concealing, or altering religious articles, texts, art, or symbols.

(c) A faith-based organization using financial assistance from DHS for social service programs retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its organization's mission statements and other governing documents.

9. Add a new § 19.11 to read as follows:

§19.11 Nondiscrimination Among Faith-Based Organizations

Neither DHS nor any State or local government or other intermediary receiving funds under any DHS social service program shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

10. Revise Appendix A to Part 19 to read as follows:

Appendix A to Part 19- Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and subject to the protections and requirements of part 19 of Title 6 of the CFR and 42 U.S.C. 2000bb *et seq*. DHS will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq*., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

11. Add Appendix B to Part 19 to read as follows:

Appendix B to Part 19: Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent

with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq*., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Chad F. Wolf,
Acting Secretary of Homeland Security.
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