

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 37****Employment and Training Administration****20 CFR Part 667**

RIN 1291-AA29

Use of Federal Financial Assistance for Religious Activities Under the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary and Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is proposing to amend the interim final regulations that implement the equal opportunity and nondiscrimination provisions of the Workforce Investment Act of 1998 (WIA). Today's proposal would revise a provision in the interim final regulations that prohibits the use of all types of WIA Title I financial assistance for the employment or training of participants in religious activities. Further, the Department of Labor is proposing to amend the regulations that implement the general provisions of WIA, to conform those regulations to the proposed changes to the interim final regulations implementing the equal opportunity and nondiscrimination provisions of WIA.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 1, 2003.

ADDRESSES: Submit comments concerning the proposed amendment to 29 CFR part 37 to Annabelle T. Lockhart, Director, Civil Rights Center (CRC). Electronic mail is the preferred method for submittal of comments regarding 29 CFR part 37. Comments by electronic mail must be clearly identified as pertaining to the proposed amendment to 29 CFR part 37, and sent to CivilRightsCenter@dol.gov. Brief comments (maximum of five pages), clearly identified as pertaining to the proposed amendment to 29 CFR part 37, may also be submitted by facsimile machine (FAX) to (202) 693-6505.

Where necessary, hard copies of comments, clearly identified as pertaining to the proposed amendment to 29 CFR part 37, may also be delivered to Director Lockhart at the U.S.

Department of Labor, 200 Constitution Avenue, NW., Room N-4123, Washington, DC 20210. Because of delays in mail delivery, CRC suggests that commenters planning to submit comments via U.S. mail place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions regarding the proposed amendments to 29 CFR part 37, whether by mail, e-mail, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning the Civil Rights Center at the numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule will be made available, upon request, in large print and electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternate format, contact CRC at (202) 693-6500 (VOICE) or (202) 693-6515/16 (TTY/TDD).

Please note that these are not toll-free numbers. You may also contact CRC at the addresses listed above.

Submit comments concerning the proposed amendments to 20 CFR part 667 to Maria Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, Department of Labor, Room N-5637, 200 Constitution Ave., NW., Washington, DC 20210. If you would like to receive notification that we have received your comments, you should include a self-addressed stamped postcard. You may submit comments by facsimile machine (FAX) to (202) 693-2766. Please note that this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed amendments to 29 CFR Part 37: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693-6500 (VOICE) or (202) 693-6515/16 (TTY/TDD). Please note that these are not toll-free numbers.

Regarding the proposed amendments to 20 CFR part 667: Maria Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, (202) 693-3700 (VOICE) or (202) 877-889-5627 (TTY/TDD). Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing to amend the interim final regulations, codified at 29 CFR part 37, that implement the equal opportunity and nondiscrimination provisions of the Workforce Investment Act of 1998 (WIA). Today's proposal would revise a provision in the interim final regulations that prohibits the use of all types of WIA Title I financial assistance for the employment or training of participants in religious activities. Further, the Department of Labor is proposing to amend the regulations, codified in 20 CFR part 667, that implement the general provisions of WIA, to conform those regulations to the proposed amendments to 29 CFR part 37.

The preamble to this proposed rule is organized as follows:

- I. Background—provides a brief description of the statutory and regulatory background of this proposed rule.
- II. Overview of the Proposed Amendments—describes the amendments that would be accomplished by this proposed rule and explains the reasons for the amendments.
- III. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

The Workforce Investment Act of 1998 (WIA) superseded the Job Training Partnership Act (JTPA) as the Department of Labor's (DOL's) primary mechanism for providing financial assistance for a comprehensive system of employment and training services for adults and dislocated workers, and comprehensive youth activities for eligible youth. In WIA, Congress authorized financial assistance for that system through fiscal year 2003. The Administration is currently working to reauthorize WIA.

WIA has several goals: (1) Enhanced employment, retention and earnings of individuals; (2) increased occupational skills attainment; and (3) improved national economic growth through better productivity and competitiveness. To achieve these goals, WIA provides workforce investment services and activities through a statewide and local network of One-Stop Career Center partners and operators. The One-Stop Career Centers support the employment needs of job seekers and meet the changing human resource requirements of American business by assisting with the recruitment, training and retention of skilled workers.

Section 188 of WIA prohibits discrimination in the One-Stop Career Center system on the bases of race, color, national origin, sex, age,

disability, religion, and political affiliation or belief. Additionally, Section 188 prohibits discrimination against beneficiaries on the basis of participation in a program or activity that is financially assisted under Title I of WIA, and against certain non-citizen beneficiaries who are lawfully admitted to and authorized to work in the United States, on the basis of citizenship.

DOL published an Interim Final Rule (IFR) to implement WIA Section 188 on November 12, 1999, entitled "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998," 64 FR 61692, codified at 29 CFR part 37. That IFR, which generally carried over the nondiscrimination- and equal opportunity-related policies and procedures in place under JTPA, remains in effect. Because Congress is scheduled to reauthorize WIA, DOL has elected to wait until that reauthorization is completed before publishing a final rule to implement the nondiscrimination and equal opportunity provisions of WIA.

However, it has come to DOL's attention that some of the regulatory restrictions that were in place under JTPA are no longer required under WIA. For this reason, and to permit recipients of DOL financial assistance more choice and greater freedom while obtaining essential employment and training skills, the Department seeks to amend the WIA nondiscrimination IFR. The specific restrictions that are the subject of this NPRM are no longer necessary because the way in which financial assistance for training activities was provided under JTPA was different, in some instances, from the way in which such assistance is provided under WIA. The WIA nondiscrimination IFR bars the use of all types of WIA Title I financial assistance to employ or train participants in religious activities. This broad prohibition is inconsistent with current law, which permits the use of such financial assistance to provide religious training in cases in which participants are given a genuine and independent private choice among training providers, and freely elect to receive training in religious activities, provided the training offered otherwise satisfies the requirements of the program. As a result, the Department believes that 29 CFR part 37 should be amended.

In addition, the regulations promulgated by the Employment and Training Administration (ETA) and codified at 20 CFR part 667, which implement the general provisions of WIA, refer to the provision in 29 CFR

part 37 that restricts the use of WIA financial assistance for training in religious activities. Accordingly, ETA's regulations should be revised as well, to conform to the amended language of part 37.

The current language of the regulatory provisions mentioned above may preclude religious organizations that are eligible training providers from receiving indirect Federal financial assistance in exchange for providing religious training, even in those situations in which participants exercise true private choice in selecting the training providers. The current regulatory language may also preclude participants from using WIA financial assistance for religious training in a manner consistent with Federal law. Therefore, the Department is proposing to amend the provisions at issue. *Cf.* Executive Order 13279, 67 FR 77139, 77141 (December 16, 2002) ("Equal Protection of the Laws for Faith-Based and Community Organizations").

The NPRM would not change the underlying requirements for WIA financially assisted training. For example, participants must qualify as eligible for training, and training services must demonstrate certain linkages to occupations in demand. *See* WIA sec. 134(d)(4).

The Secretary of Labor has rulemaking authority for the parts of the Code of Federal Regulations that would be amended by this proposed rule. The remaining sections of this preamble will explain the reasoning underlying the proposed amendments.

The Department seeks comments on all issues concerning the proposed amendments to 29 CFR part 37 and the concurrent proposed revisions to 20 CFR 667. The Department is interested in comments from current and potential recipients of WIA title I financial assistance as to the effect of participating in the program as permitted in the revised paragraph 37.6(f)(2) on their programs and operations in light of the existing rules and regulations imposed on recipients in 29 CFR Part 37 including paragraph 37.6(c).

II. Overview of the Proposed Amendments

29 CFR Part 37

Proposed Paragraph 37.6(f)(1)

The existing language of paragraph 37.6(f)(1) bars recipients from permitting participants "to be employed or trained in sectarian activities." The provision was not based on any specific statutory authority conferred by WIA or JTPA; rather, as discussed in more detail

below, it was a regulatory provision promulgated under JTPA because of the manner in which financial assistance was provided under that program. Because some of the methods used to provide financial assistance under WIA are different from those used under JTPA, the proposal would revise paragraph 37.6(f)(1) to allow for more flexibility based on those differences.

Under JTPA, training institutions received financial assistance, channeled to training providers through State or local governments or private industry councils. The providers that participated under JTPA were selected pursuant to the job training plan established by each service delivery area. Pub. L. 97-300, §§ 104(b)(5), 107(a), (d), 96 Stat. 1322, 1331, 1355-56 (1982). Nothing in the language of JTPA indicates that beneficiaries or participants were provided any opportunity to choose which training providers would receive financial assistance, and the Department did not administer JTPA in a way that allowed participants to exercise true private choice in selecting training providers. *See* Pub. L. No. 97-300, *passim*. Therefore, consistent with constitutional requirements that in certain circumstances restrict direct Federal financial assistance for inherently religious activities in the absence of true private choice, *see, e.g., Bowen v. Kendrick*, 487 U.S. 589, 611-12 (1988); *Mitchell v. Helms*, 530 U.S. 793, 815-16 (2002) (plurality opinion); *Zelman v. Simmons-Harris*, 536 U.S. 639, 649-55 (2002), the prohibition on the use of JTPA financial assistance for "employment or training in sectarian activities" was codified in the JTPA regulations promulgated by ETA, in a specific provision that stated that "the employment or training of participants in sectarian activities is prohibited." 59 FR 45760, 45822, § 627.210(b) (September 2, 1994) (final rule).

Under WIA, there are grant programs for which the financial assistance is provided directly to certain programs or activities, as under JTPA. However, much of the financial assistance available under WIA for training of individual beneficiaries is provided as a result of beneficiaries' genuine and independent private choice. The constitutional restrictions on the use of Federal financial assistance to support training in religious activities do not apply where the assistance is provided to religious organizations as a result of such genuine and independent private choices, provided the training otherwise satisfies the requirements of the program. *See Zelman v. Simmons-Harris*, 536 U.S. at 652; *see also Witters*

v. Washington Department of Services for the Blind, 474 U.S. 481, 488 (1986).

For example, under Section 122 of WIA, a training provider that meets certain statutory criteria may apply to be identified as an eligible provider of training services. 29 U.S.C. 2842(a). Nothing in the statutory criteria excludes religious organizations from being so identified. *Id.* In addition, under WIA Section 134(d)(4), training services for participants or beneficiaries are primarily paid for through individual training accounts (ITAs). 29 U.S.C. 2864(d)(4)(G). For these services, (1) participants select their preferred training provider from a State's list of eligible providers and receive training; and (2) the provider receives payment from the participants' ITAs through electronic transfers of funds, vouchers, or other appropriate methods. *Id.*; 29 U.S.C. 2864(d)(4)(F), "Consumer Choice Requirements"; 20 CFR 663.410.

The preamble to the WIA nondiscrimination regulations indicates that 29 CFR 37.6(f) "is directly based on, and implements, Section 188(a)(3) of WIA." 64 FR at 61698. This statement is true with regard to existing paragraphs 37.6(f)(2) and (f)(3). Compare 29 U.S.C. 2938(a)(3) with 29 CFR 37.6(f)(2) and (f)(3). Paragraph 37.6(f)(1), however, originated in the IFR promulgated by ETA to implement the general provisions of WIA, and was merely a carry-over from the JTPA regulations, with no basis in the WIA statute. When the WIA nondiscrimination IFR was promulgated seven months after ETA's IFR, paragraph 37.6(f)(1) was inserted in the nondiscrimination regulations. Compare 64 FR 18662, 18729, 18730, §§ 667.266(a), 667.275(b) (April 15, 1999), with 29 CFR 37.6(f)(1). None of the language of the WIA statute, in Section 188(a)(3) or elsewhere addresses the employment or training of beneficiaries in religious activities.

The proposed rule would amend paragraph 37.6(f)(1) to allow religious organizations to receive government financial assistance that is provided indirectly through the genuine and independent private choices of beneficiaries. The proposed new language would allow participants to use their ITAs, or similar training accounts under programs established by States or Local Workforce Investment Areas (LWIAs), for religious training, as long as the training account programs afford participants genuine and independent choice between religious and non-religious training options, and the religious organizations receiving assistance otherwise satisfy the requirements of the program.

The proposed revision to paragraph 37.6(f)(1) would provide that financial assistance provided directly to a religious organization may not be expended for religious employment or training. Further, the revised paragraph would provide that, for purposes of the paragraph, the term "direct" would mean financial assistance that is provided at the direction of a governmental entity, or an intermediate organization with the same duties as a governmental entity under this program, as opposed to financial assistance that an organization receives as a result of the genuine and independent choice of a beneficiary. See *Zelman v. Simmons-Harris*, 536 U.S. 639.

Proposed Paragraph 37.6(f)(2)

[Current paragraph 37.6(f)(2) would be redesignated paragraph 37.6(f)(3).] Consistent with the discussion above, the proposal would add a new paragraph 37.6(f)(2) to permit WIA Title I financial assistance to be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers); that mechanism permits participants to direct the financial assistance to the provider of their choice; and the training provider that receives the assistance otherwise satisfies the requirements of the program.

The revision would also be consistent with, and would assist in implementing, the principles underlying Executive Order 13279, "Equal Protection of the Laws for Faith-Based and Community Organizations," issued by President Bush on December 12, 2002, and reprinted at 67 FR 77141 (December 12, 2002). The purposes of Executive Order 13279 include ensuring equal protection of the laws for faith-based and community organizations, and furthering the national effort to expand opportunities for, and strengthening the capacity of, faith-based and community organizations so that they may better meet the social needs in America's communities. In the Department's view, the proposed language for paragraph 37.6(f)(2) is necessary in order to comply with this requirement.

Proposed Paragraphs 37.6(f)(3) and (f)(4)

[Current paragraph 37.6(f)(3) would be redesignated paragraph 37.6(f)(4).]

The existing language of paragraphs 37.6(f)(2) and (f)(3) implements Section 188(a)(3) of the Workforce Investment Act, 29 U.S.C. 2938(a)(3), which

precludes participants in a WIA financially assisted program from "being employed to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship." This statutory prohibition covers all forms of financial assistance, including assistance that is provided as a result of the independent and private decisions of participants. WIA Section 188(a)(3) does permit participants to be employed "with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants."

Existing paragraph 37.6(f)(2) addresses the employment activities at facilities devoted to religious instruction and worship that are proscribed by WIA Section 188(a)(3) of WIA. The employment activities that WIA Section 188(a)(3) permits at facilities operated by religious organizations are addressed in existing paragraph 37.6(f)(3). In the proposed regulations, existing paragraphs 37.6(f)(2) and (f)(3) would be redesignated as paragraphs 37.6(f)(3) and (f)(4), respectively. In addition, these paragraphs were revised in this proposed rule to make them easier to understand, and to adhere more closely to the language of WIA Section 188(a)(3). The proposed revisions are not intended to alter the meaning of these paragraphs.

20 CFR Part 667

Proposed Paragraphs 667.266(b)(1) and (2)

The prohibition on employing and training participants in religious activities found in the current 29 CFR 37.6(f)(1) is also set forth in 20 CFR 667.266(b)(1) of ETA's current regulations implementing WIA. The proposal would revise the provisions in 20 CFR 667.266(b)(1) to conform them to the proposed revisions to 29 CFR 37.6(f)(1). Thus, paragraph 667.266(b)(1) in the proposed rule would provide that WIA Title I financial assistance provided directly from the State or LWIA to a religious organization may not be expended for religious employment or training. Also, proposed paragraph 667.266(b)(2) would provide that WIA Title I financial assistance may be used for religious employment and training where the State or LWIA has a mechanism for providing such assistance that gives participants a

genuine and independent choice among training providers, as set forth in proposed 29 CFR 37.6(f)(2). Further, the current language of 20 CFR 667.266(b)(2) sets forth the prohibition on employing persons to carry out construction, operation, or maintenance of facilities used for religious instruction or religious worship that is found in 29 CFR 37.6(f)(1). The only change proposed to existing 20 CFR 667.266(b)(2) is to revise the cross-references to 29 CFR 37.6(f)(1) and (f)(2) to 29 CFR 37.6(f)(3) and (f)(4), respectively.

Proposed Paragraph 667.275(b)

The existing language of 20 CFR 667.275(b) also refers to the provision in existing 29 CFR 37.6(f) that prohibits the employment and training of participants in religious activities. Accordingly, the proposed rule would revise 20 CFR 667.275(b) to conform to the proposed revisions to existing 29 CFR 37.6(f). Proposed paragraph 667.275(b) would provide that WIA financial assistance provided directly to a recipient may not be expended for the employment or training of participants in religious activities, but that WIA Title I financial assistance that is provided indirectly may be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers) and the other conditions outlined in 29 CFR 29.37.6(f)(2) are met. Further, proposed paragraph 667.275(b) would state that WIA financial assistance may not be used in employment or training activities that involve the construction or maintenance of any facility used for religious instruction or a place of worship, but that the employment of participants to maintain a facility that is not primarily or inherently devoted to religious instruction or worship is permitted if the organization operating the facility is part of an organization that provides services to participants.

III. Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, "Regulatory Planning and Review." OMB has determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order. However, this rule is not an economically significant regulatory action under the Order, and therefore,

no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The proposed rule would not substantially change the existing obligation of recipients or entities operating Federally-assisted programs or activities to apply a policy of nondiscrimination and equal opportunity in employment or services. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by any State, local, and tribal governments.

Paperwork Reduction Act

The proposed rule contains no new information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act.

Executive Order 13132

This proposed rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

20 CFR Part 667

Employment, Grant programs—Labor, Reporting and recordkeeping requirements

29 CFR Part 37

Administrative practice and procedure, Discrimination, Civil rights, Equal education opportunity, Equal employment opportunity, Grant programs—Labor, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 667, subpart B, title 20 of the Code of Federal Regulations, and part 37, subpart A, title 29 of the Code of Federal Regulations, are amended to read as set forth below.

Signed at Washington, DC this 22nd day of September, 2003.

Elaine L. Chao,
Secretary of Labor.

Title 20—Employees' Benefits

Chapter V—Employment and Training Administration, Department of Labor

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT (WIA)

1. The authority citation for part 667 is revised to read as follows:

Authority: Section 506(c), Pub. L. 105–220, 112 Stat. 1246 (20 U.S.C. 9276(c)).

2. In § 667.266, the section heading and paragraph (b) are revised to read as follows:

§ 667.266 What are the limitations related to religious activities?

* * * * *

(b) Under these limitations:

(1) WIA title I financial assistance provided directly from the State or LWIA to a religious organization may not be expended for religious employment or training. This limitation is more fully described at 29 CFR 37.6(f)(1). As set forth in 29 CFR 37.6(f)(2), financial assistance provided under title I of WIA may be used to train participants in religious activities where the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers), that mechanism permits participants to direct the financial assistance to the provider of their choice, and the provider receiving the assistance otherwise satisfies the requirements of the program.

(2) Under 29 CFR 37.6(f)(3), participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for religious instruction or as a place for religious worship. However, as discussed in 29 CFR 37.6(f)(4), WIA financial assistance may be used for the maintenance of a facility to the extent that it is not primarily or inherently devoted to religious instruction or religious worship and provided that the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

* * * * *

3. In § 667.275, the section heading and paragraph (b) are revised to read as follows:

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in religious activities?

* * * * *

(b) Under 29 CFR 37.6(f), WIA financial assistance provided directly to a recipient may not be expended for religious employment or training, but financial assistance provided under title I of WIA may be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers), that mechanism permits participants to direct the financial assistance to the provider of their choice, and the provider receiving the assistance otherwise satisfies the requirements of the program. WIA financial assistance may not be used in employment or training activities that involve the construction, or maintenance of any facility used for religious instruction or as a place of worship, but the employment of participants to maintain a facility to the extent that it is not primarily or inherently devoted to religious instruction or worship is permitted, and provided that the organization operating the facility is part of a program or activity that provides services to participants.

Title 29—Labor

Subtitle A—Office of the Secretary

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

1. The authority citation for part 37 continues to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681.

2. In § 37.6, paragraph (f) is revised to read as follows:

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

* * * * *

(f)(1) No financial assistance provided directly from the State or LWIA to a religious organization may be expended for religious employment or training. For purposes of this paragraph, the term “direct” means financial assistance that is provided at the direction of a governmental entity, or an intermediate organization with the same duties as a governmental entity under this program, as opposed to financial assistance that an organization receives as a result of the genuine and independent choice of the beneficiary.

(2) A recipient may permit WIA title I financial assistance to be used to train participants in religious activities if:

(i) The State or LWIA has established a mechanism for providing such financial assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers);

(ii) The mechanism established by the State or LWIA includes an Individual Training Account (ITA), voucher, coupon, certificate, or other similar procedure through which participants direct the WIA Title I financial assistance to the provider of their choice; and

(iii) The selected provider otherwise satisfies the requirements of the program.

(3) Except under the circumstances described in paragraph (f)(4) below, a recipient must not permit participants to engage in employment or training activities that involve the construction, operation, or maintenance of any facility, or any part of a facility, that is used, or will be used, for religious instruction or as a place of religious worship.

(4) A recipient may permit participants to engage in employment or training activities that involve the maintenance of a facility that is used, or will be used, for religious instruction or religious worship.

(i) To the extent that the facility is not primarily or inherently devoted to religious instruction or religious worship, and

(ii) Provided that the organization operating the facility is part of a program or activity providing services to participants.

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