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stayed pending further agency action, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision is severable from this part and will not affect the remaining provisions.

[88 FR 57728, Aug. 23, 2023]

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#### **APPENDIX A TO SUBPART D OF PART 2—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES**

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#### **APPENDIX C TO SUBPART D OF PART 2—WRITTEN NOTICE OF BENEFICIARY PROTECTIONS**

AUTHORITY: 5 U.S.C. 301; E.O. 13198, 66 FR 8497, 3 CFR, 2001 Comp., p. 750; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

### **Subpart A—General**

SOURCE: 32 FR 11035, July 28, 1967, unless otherwise noted.

#### **§ 2.1 Employees attached to regional offices.**

No person who has been an employee of the Department and attached to a Regional office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof in connection with any case or administrative proceeding which was pending before such Regional office during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

#### **§ 2.2 Employees attached to Washington office.**

No person who has been an employee of the Department and attached to the Washington office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or

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any branch or agent thereof, in connection with any case or administrative proceeding pending before such bureau, board, division, or other agency during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

### § 2.3 Consent of the Secretary.

The consent of the Secretary or his duly authorized representative may be obtained as follows:

The applicant shall file an application in the form of an affidavit. Such application, directed to the Secretary should:

(a) State the former connection of the applicant with the Department;

(b) Identify the matter in which the applicant desires to appear, and

(c) Contain a statement to the effect that the applicant gave no personal consideration to such matter while he was an employee of the Department.

The application will be denied if the statements contained therein are disproved by an examination of the files, records, and circumstances pertaining to the matter, or if, in the opinion of the Secretary or his duly authorized representative, the public interest so requires. If the Secretary or his duly authorized representative is satisfied that the applicant gave no personal consideration to the matter in question while employed by the Department, and if he is satisfied that it is lawful and consistent with the public interest to do so, he may grant his consent, in writing, to the request of the applicant, subject to such conditions, if any, as he deems necessary and desirable. Any function of the Secretary under this section may be performed by the Under Secretary of Labor.

### § 2.6 Claims collection.

(a) *Authority of Department; incorporation by reference.* The regulations in this section are issued under section 3 of the Federal Claims Collection Act of 1966, 31 U.S.C. 952. They incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations of the Attorney General and the Comptroller General set forth in 4 CFR chap. II, which pre-

scribe standards for administrative collection of civil claims by the Government for money or property, for the compromise, termination, or suspension of collection action, with respect to claims not exceeding \$20,000, exclusive of interest, and for the referral of civil claims by the Government to the Government Accountability Office, and to the Department of Justice for litigation.

(b) *Designation.* The Assistant Secretary for Administration and Management, and such heads of the Administrations and Offices of the Department of Labor as he may designate for such purpose, is authorized to perform all of the duties and exercise all of the authority of the Secretary under the Federal Claims Collection Act of 1966, the aforementioned Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this section.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

[34 FR 9122, June 10, 1969, as amended at 72 FR 37098, July 9, 2007]

### § 2.7 Rulemaking.

It is the policy of the Secretary of Labor, that in applying the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the exemption therein for matters relating to public property, loans, grants, benefits or contracts shall not be relied upon as a reason for not complying with the notice and public participation requirements thereof except for all information-gathering procedures adopted by the Bureau of Labor Statistics.

[46 FR 35, Jan. 2, 1981]

### § 2.8 Final agency decisions.

Final agency decisions issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations according

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to, and except as provided in Secretary's Order 01-2020 (or any successor to that order).

[85 FR 30616, May 20, 2020]

### Subpart B—Audiovisual Coverage of Administrative Hearings

SOURCE: 38 FR 5631, Mar. 2, 1973, unless otherwise noted.

#### § 2.10 Scope and purpose.

This subpart defines the scope of audiovisual coverage of departmental administrative hearings. It describes the types of proceedings where such coverage is encouraged, defines areas where such coverage is prohibited (as in certain enforcement proceedings or where witnesses object) and areas where a decision concerning coverage is made after weighing the values involved in permitting coverage against the reasons for not permitting it.

#### § 2.11 General principles.

The following general principles will be observed in granting or denying requests for permission to cover hearings audiovisually:

(a) Notice and comment and on-the-record rule making proceedings may involve administrative hearings. If such administrative hearings are held, we encourage their audiovisual coverage.

(b) Audiovisual coverage shall be excluded in adjudicatory proceedings involving the rights or status of individuals (including those of small corporations likely to be indistinguishable in the public mind from one or a few individuals) in which an individual's past culpable conduct or other aspect of personal life is a primary subject of adjudication, and where the person in question objects to coverage.

(c) Certain proceedings involve balancing of conflicting values in order to determine whether audiovisual coverage should be allowed. Where audiovisual coverage is restricted, the reasons for the restriction shall be stated in the record.

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#### § 2.12 Audiovisual coverage permitted.

The following are the types of hearings where the Department encourages audiovisual coverage:

(a) All hearings involving notice and comment and on-the-record rule making proceedings. The Administrative Procedure Act provides for notice of proposed rule making with provision for participation by interested parties through submission of written data, views, or arguments, with or without opportunity for oral presentation (5 U.S.C. 553). (In many cases the Department follows the above procedure in matters exempted from these requirements of 5 U.S.C. 553.) On-the-record rule making proceedings under 5 U.S.C. 556 and 557 are also hearings where audiovisual coverage of hearings is encouraged. Examples of hearings encompassed by this paragraph are:

(1) Hearings to establish or amend safety or health standards under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

(2) Hearings to determine the adequacy of State laws under the Occupational Safety and Health Act of 1970.

(b) Hearings to collect or review wage data upon which to base minimum wage rates determined under various laws, such as the Davis-Bacon Act (40 U.S.C. 276a) and related statutes and the Service Contract Act of 1965 (41 U.S.C. 353, as amended by Pub. L. 92-473 approved October 9, 1972).

(c) Hearings under section 4(c) of the Service Contract Act of 1965 (41 U.S.C. 353, subsection (c) added by Pub. L. 92-473 approved October 9, 1972) to determine if negotiated rates are substantially at variance with those which prevail in the locality for services of a character similar.

(d) Hearings before the Administrative Review Board (parts 1, 3, 5, and 7 of this chapter).

(e) Hearings held at the request of a Federal agency to resolve disputes under the Davis-Bacon and related Acts, involving prevailing wage rates or proper classification which involve significant sums of money, large groups of employees or novel or unusual situations.

(f) Hearings of special industry committees held pursuant to the Fair Labor Standards Act, as amended (29

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U.S.C. 201 *et seq.*) for the purpose of recommending minimum wage rates to be paid in Puerto Rico, the Virgin Islands, and American Samoa.

(g) Hearings pursuant to section 13(a) of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 308d) to determine whether a bond in excess of \$500,000 may be prescribed.

(h) Hearings where the Department is requesting information needed for its administrative use in determining what our position should be (e.g., our hearings on the 4-day, 40-hour work-week).

[38 FR 5631, Mar. 2, 1973, as amended at 61 FR 19984, May 3, 1996]

### § 2.13 Audiovisual coverage prohibited.

The Department shall not permit audiovisual coverage of the following types of hearings if any party objects:

(a) Hearings to determine whether applications for individual variances should be issued under the Occupational Safety and Health Act of 1970.

(b) Hearings (both formal and informal) involving alleged violations of various laws such as the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) and related Acts, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), the Walsh Healey Act (41 U.S.C. 35 *et seq.*), under section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941 *et seq.*), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*), and any informal hearings or conferences under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) which are not within the jurisdiction of the Occupational Safety and Health Commission.

(c) Adversary hearings under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*) and related Acts, which determine an employee's right to compensation.

(d) Hearings which determine an employee's right to compensation under the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*).

### § 2.14 Proceedings in which the Department balances conflicting values.

In proceedings not covered by §§ 2.12 and 2.13, the Department should determine whether the public's right to know outbalances the individual's right to privacy. When audiovisual coverage is restricted or excluded, the record shall state fully the reasons for such restriction or exclusion. For example, there would be included in this category hearings before the Board of Contract Appeals involving appeals from contracting officer decisions involving claims for extra costs for extra work, extra costs for delay in completion caused by the Government or for changes in the work, conformity hearings arising under State unemployment insurance laws, etc.

### § 2.15 Protection of witnesses.

A witness has the right, prior to or during his testimony, to exclude audiovisual coverage of his testimony in any hearing being covered audiovisually.

### § 2.16 Conduct of hearings.

The presiding officer at each hearing which is audiovisually covered is authorized to take any steps he deems necessary to preserve the dignity of the hearing or prevent its disruption by persons setting up or using equipment needed for its audiovisual coverage.

## Subpart C—Employees Served With Subpoenas

AUTHORITY: 5 U.S.C. 301 and Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263.

SOURCE: 46 FR 49543, Oct. 6, 1981, unless otherwise noted.

### § 2.20 Purpose, scope and definitions.

(a) This subpart sets forth the procedures to be followed whenever a subpoena, order, or other demand (hereinafter referred to as a *demand*) of a court or other authority, in connection with a proceeding to which the U.S. Department of Labor is not a party, is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the

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files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term *employee of the Department* includes all officers and employees of the United States Department of Labor appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Labor.

(c)(1) For purposes of this subpart, the term *appropriate Deputy Solicitor of Labor* means the Deputy Solicitor of Labor for National Operations when the person served with a demand is either employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, DC. In all other cases, the term *appropriate Deputy Solicitor of Labor* means the Deputy Solicitor of Labor for Regional Operations.

(2) For purposes of this subpart, the term *appropriate Office of the Solicitor* means that Office of the Associate Solicitor of Labor (in Washington, DC) serving as counsel to the program to which the demand relates, where the person served with a demand is employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, DC. In all other cases, the term *appropriate Office of the Solicitor* means that Regional Solicitor's Office or Associate Regional Solicitor's Office serving the locality in which the employee or former employee is served with a demand.

(d) This subpart is intended to provide instructions regarding the internal operations of the Department of Labor, and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Labor.

### § 2.21 Procedure in the event of a demand for production or disclosure.

Whenever an employee or former employee of the Department receives a demand for the production of material or

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the disclosure of information described in § 2.20(a), he shall immediately notify the appropriate Office of the Solicitor. The appropriate Office of the Solicitor shall be furnished by the party causing the subpoena to be issued with a written summary of the information sought and its relevance to the proceeding in connection with which it was served. The Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is appropriate, may waive the requirement that a written summary be furnished where he or she deems it to be unnecessary. The election to waive the requirement of a written summary in no way constitutes a waiver of any other requirement set forth in this subpart.

### § 2.22 Production or disclosure prohibited unless approved by the appropriate Deputy Solicitor of Labor.

In terms of instructing an employee or former employee of the manner in which to respond to a demand, the Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is applicable, shall follow the instructions of the appropriate Deputy Solicitor of Labor. No employee or former employee of the Department of Labor shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without approval of the appropriate Deputy Solicitor of Labor.

### § 2.23 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the appropriate Deputy Solicitor of Labor are received, a Department attorney or other government attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of

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the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Deputy Solicitor of Labor and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

### § 2.24 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2.23 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, “*United States ex rel Touhy v. Ragen*,” 340 US. 462.

### § 2.25 Subpoenas served upon employees of the Office of the Inspector General.

Notwithstanding the requirements set forth in §§ 2.20 through 2.24, this subpart is applicable to demands served on employees or former employees of the Office of the Inspector General (OIG), except that wherever in §§ 2.21 through 2.24 there appear the phrases *appropriate Office of the Solicitor*, *Associate Solicitor*, *Regional Solicitor*, or *Associate Regional Solicitor*, and *appropriate Deputy Solicitor of Labor*, there shall be substituted in lieu thereof *the Inspector General or Deputy Inspector General*. In addition, the first sentence of § 2.22 shall not be applicable to subpoenas served upon employees or former employees of the Office of the Inspector General.

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

SOURCE: 69 FR 41891, July 12, 2004, unless otherwise noted.

### § 2.30 Purpose.

The purpose of the regulations in this subpart is to ensure that DOL-supported social service programs are open to all qualified organizations, regardless of the organizations’ religious character, and to establish clearly the permissible uses to which DOL support for social service programs may be put, and the conditions for receipt of such support. In addition, this proposed rule is designed to ensure that the Department’s social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

### § 2.31 Definitions.

As used in the regulations in this subpart:

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

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

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

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

(ii) The organization receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

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

(b) The term *social service program* means a program that is administered or supported by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(1) Child care services and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);

(2) Job training and related services, and employment services;

(3) Information, referral, and counseling services;

(4) Literacy and mentoring programs; and

(5) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of domestic violence.

(c) The term *DOL* means the U.S. Department of Labor.

(d) The term *DOL-supported social service program*, *DOL social service program*, or *DOL program* means a social service program, as defined in paragraph (b) of this section, that is administered by or for DOL with DOL support. Such programs include, but are not limited to, the one-stop delivery system, Job Corps, and other programs supported through the Workforce Innovation and Opportunity Act.

(e) The term *DOL social service provider* means any non-Federal organization, other than a State or local government, that seeks or receives DOL support as defined in paragraph (g) of this section, or participates in DOL programs other than as the ultimate beneficiary of such programs.

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

(g) The term *DOL support* means Federal financial assistance, as well as procurement funding provided to a non-Federal organization, including a State or local government, to support the organization's administration of or participation in a DOL social service program as defined in paragraph (d) of this section.

(h) The term *religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

[69 FR 41891, July 12, 2004, as amended at 81 FR 19421, Apr. 4, 2016; 85 FR 82140, Dec. 17, 2020; 89 FR 15715, Mar. 4, 2024]

**§ 2.32 Equal participation of faith-based organizations.**

(a)(1) Faith-based organizations are eligible, on the same basis as any other organization, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL and DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(2) Notices and announcements of award opportunities, and notices of awards and contracts, shall include language substantially similar to that in appendices A and B to this subpart, respectively.

(b)(1) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations.

(2) No grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program shall disqualify faith-based or religious organizations from receiving DOL support or participating in DOL programs on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(c)(1) A faith-based organization that is a DOL social service provider retains its autonomy; right of expression; religious character; and independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, development, practice, and

expression of its religious beliefs, provided that it does not use direct Federal financial assistance, whether received through a prime award or subaward, to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization).

(2) Among other things, a faith-based organization must be permitted to:

(i) Use its facilities to provide DOL-supported social services without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(ii) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on the basis of their acceptance of or adherence to the religious requirements or standards of the organization, and including religious references in its mission statements and other governing documents.

(d)(1) Any restrictions on the use of financial assistance under a grant shall apply equally to faith-based and non-faith-based organizations.

(2) All organizations, including religious ones, that are DOL social service providers must carry out DOL-supported activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance for explicitly religious activities (including worship, religious instruction, or proselytization).

(e)(1) Nothing in this subpart shall be construed to preclude DOL from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(2) DOL shall not disqualify an organization from participating in any DOL program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and DOL has determined that it would deny the accommodation.

[89 FR 15716, Mar. 4, 2024]



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

(a) Any organization that participates in a program funded by Federal financial assistance shall not, in providing services supported in whole or in part with Federal financial assistance, or in conducting outreach activities related to such services, discriminate against a current 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. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. This requirement does not preclude DOL, DOL social service intermediary providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause of the First Amendment to the Constitution.

(b)(1) Organizations that receive direct Federal financial assistance may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct Federal financial assistance. If an organization conducts such explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance, and participation must be voluntary for beneficiaries of the programs and services funded with such assistance.

(2) This regulation is not intended to and does not restrict the exercise of rights or duties guaranteed by the Constitution. For example, program officials must not impermissibly restrict the ability of program beneficiaries or DOL social service providers to freely express their views and to exercise their right to religious freedom. Additionally, subject to reasonable and permissible time, place and manner restrictions, residential facilities that re-

ceive DOL support must permit residents to engage in voluntary religious activities, including holding religious services, at these facilities.

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

(i) Where DOL support is provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers through social service programs;

(ii) Where DOL support is provided to social service programs in prisons, detention facilities, or community correction centers, in which social service organizations assist chaplains in carrying out their duties; or

(iii) Where DOL-supported social service programs involve such a degree of government control over the program environment that religious exercise would be significantly burdened absent affirmative steps by DOL or its social service providers.

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

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the program's statutory and regulatory provisions.

[69 FR 41891, July 12, 2004, as amended at 81 FR 19421, Apr. 4, 2016; 85 FR 82141, Dec. 17, 2020; 89 FR 15716, Mar. 4, 2024]

### § 2.34 Written notice to beneficiaries.

(a) *Notice to beneficiaries of programs supported by direct Federal financial assistance.* Organizations providing social services to beneficiaries under programs supported by direct Federal financial assistance from DOL must give the written notice described in paragraph (c) of this section to beneficiaries and prospective beneficiaries.

(b) *Notice to beneficiaries of programs supported by indirect Federal financial assistance.* The entity responsible for disbursing Federal funds as part of a program of indirect Federal financial assistance administered by DOL must give the written notice described in paragraph (c) of this section to beneficiaries and prospective beneficiaries.

(c) *Contents of the notice.* The required language for the written notice to beneficiaries and prospective beneficiaries is set forth in appendix C to this subpart. The notice includes the following:

(1) The organization may not discriminate against beneficiaries or prospective beneficiaries 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;

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

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) Beneficiaries and prospective beneficiaries may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with DOL's Civil Rights Center, 200 Constitution Avenue NW, Room N-4123,

Washington, DC 20210, or by email to [CRCEXternalComplaints@dol.gov](mailto:CRCEXternalComplaints@dol.gov); and

(5) Beneficiaries and potential beneficiaries may seek information about whether there are any other federally funded organizations that provide these kinds of services in their area by calling DOL's US2-JOBS helpline toll-free at 1-877-US2-JOBS (1-877-872-5627) or TTY 1-877-889-5627.

(d) *Timing.* The written notice set forth in appendix C to this subpart must be given to prospective beneficiaries before they enroll in the program or receive services from the program. The written notice may be incorporated into materials that are otherwise provided to prospective beneficiaries. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

[89 FR 15716, Mar. 4, 2024]

### § 2.35 [Reserved]

### § 2.36 Application to State and local funds.

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

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

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

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C.

## § 2.38

2000e-1, is not forfeited when the organization receives direct or indirect Federal financial assistance from DOL. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. In this case, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program office or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, (202) 693-6500. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to reach the number in the preceding sentence through telecommunications relay services.

[89 FR 15717, Mar. 4, 2024]

### § 2.38 Status of nonprofit organizations.

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

(b) Unless otherwise provided by statute, in DOL programs in which an applicant must show that it is a nonprofit organization, the applicant must be permitted to do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as tax exempt under section 501(c)(3) of the Internal Revenue Code;

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(2) A statement from a State taxing body or the State Secretary of State certifying that:

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

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

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

(4) Any item described in paragraphs (b)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

[69 FR 41891, July 12, 2004. Redesignated at 81 FR 19423, Apr. 4, 2016; 85 FR 82141, Dec. 17, 2020; 89 FR 15717, Mar. 4, 2024]

### § 2.39 Political or religious affiliation.

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

[81 FR 19423, Apr. 4, 2016, as amended at 85 FR 82141, Dec. 17, 2020]

### § 2.40 Nondiscrimination among faith-based organizations.

Neither DOL nor any State or local government or other entity receiving financial assistance under any DOL program or service shall construe the provisions of this part 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.

[85 FR 82141, Dec. 17, 2020]

### § 2.41 Severability.

Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will not affect any other provision of this subpart.

[85 FR 82141, Dec. 17, 2020]

## Office of the Secretary of Labor

## Pt. 2, Subpt. D, App. C

### APPENDIX A TO SUBPART D OF PART 2— NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

(a) Faith-based organizations may apply for this award on the same basis as any other organization, subject to the protections and requirements of this subpart and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* DOL will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) 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 and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DOL, or in conducting outreach activities related to such services, 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.

[89 FR 15717, Mar. 4, 2024]

### APPENDIX B TO SUBPART D OF PART 2— NOTICE OF AWARD OR CONTRACT

(a) 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 and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DOL, or in conducting outreach activities related to such services, 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.

[89 FR 15717, Mar. 4, 2024]

### APPENDIX C TO SUBPART D OF PART 2— WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

Name of Organization:

Name of Program:

Type of Federal Financial Assistance:  
[specify DIRECT Federal financial assistance  
or INDIRECT Federal financial assistance]

Contact Information for Program Staff:  
[provide name, phone number, and email address, if appropriate]

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

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

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

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

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Labor's Civil Rights Center, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, or by email to [CRCEXternalComplaints@dol.gov](mailto:CRCEXternalComplaints@dol.gov); and

(5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please call toll-free 1-877-US2-JOBS (1-877-872-5627) or TTY 1-877-889-5627.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

[89 FR 15717, Mar. 4, 2024]