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APPENDIX A TO PART 86—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

[NOTE]

NOTE: For the text of these guidelines, see 45 CFR part 80, appendix B. [44 FR 17168, Mar. 21, 1979]

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.

87.1 Definitions.

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APPENDIX A TO PART 87—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.*

SOURCE: 81 FR 19426, Apr. 4, 2016, unless otherwise noted.

§ 87.1 Definitions.

The following definitions apply for the purposes of this part.

(a) *Direct Federal financial assistance*, *Federal financial assistance provided directly*, or *direct funding* means financial assistance received by an entity selected by the Government or a pass-through entity (as defined in 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.

(b) *Directly funded* means funded by means of direct Federal financial assistance.

(c) *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-

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funded payment provided to a beneficiary who is able to make a choice of a service provider.

(d) Federal 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.

(e) *Pass-through entity* means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government funded social services.

(f) *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients, but does include pass-through entities.

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

[85 FR 82145, Dec. 17, 2020]

§ 87.2 Applicability.

This part applies to grants awarded in HHS social service programs governed by either the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 45 CFR part 75 or Block Grant regulations at 45 CFR part 96, except as provided in paragraphs (a) and (b) of this section.

(a) *Discretionary grants*. This part is not applicable to the discretionary grant programs that are governed Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice regulations found at 42 CFR part 54a. This part is also not applicable to discretionary grant programs that are governed by the Community Services Block Grant (CSBG) Charitable Choice regulations at 45 CFR part 1050, with the exception of §§ 87.1 and 87.3(i) through (l) which do apply to such CSBG discretionary grants. Discretionary grants authorized by the Child Care and Develop-

ment Block Grant Act are also not governed by this part.

(b) *Formula and block grants*. This part does not apply to non-discretionary and block grant programs governed by the SAMHSA Charitable Choice regulations found at 42 CFR part 54, or the Temporary Assistance for Needy Families (TANF) Charitable Choice regulations at 45 CFR part 260. Block grants governed by the CSBG Charitable Choice regulations at 45 CFR part 1050 are not subject to this part, with the exception that §§ 87.1 and 87.3(i) through (l) do apply to such CSBG block grants. This part is not applicable to Child Care and Development Block Grants governed by 45 CFR part 98.

§ 87.3 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, and considering any permissible accommodation, to participate in any HHS awarding agency program or service for which they are otherwise eligible. The HHS awarding agency program or service shall provide such accommodation as is consistent with Federal law, the Attorney General's Memorandum of October 6, 2017 (Federal Law Protections for Religious Liberty), and the Religion Clauses of the First Amendment to the U.S. Constitution. Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall, in the selection of service providers, discriminate against an organization on the basis of the organization's religious 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 of this part. For purposes of this part, to discriminate against an organization on the basis of the organization's religious exercise means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or

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penalizes an organization in the selection process or has such an effect:

(1) Because of conduct that would not be considered grounds to disfavor a secular organization;

(2) Because of conduct that must or could be granted an appropriate accommodation in a manner consistent with the Religious Freedom Restoration Act (42 U.S.C. 2000bb through 2000bb-4) or the Religion Clauses of the First Amendment to the Constitution; or

(3) Because of the actual or suspected religious motivation of the organization's religious exercise.

(b) Organizations that receive direct financial assistance from an HHS awarding agency may not engage in any 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 financial assistance from the HHS awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HHS's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based organization that participates in HHS awarding-agency funded programs or services will retain its autonomy; right of expression; religious character; 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. A faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without concealing, removing, or altering religious art, icons, scriptures, or other religious

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symbols. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its 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 mission statements and other governing documents. In addition, a faith-based organization that receives financial assistance from the HHS awarding agency does not lose the protections of law.

NOTE 1 TO PARAGRAPH (C): Memorandum for All Executive Departments and Agencies, From the Attorney General, "Federal Law Protections for Religious Liberty" (Oct. 6, 2017) (describing Federal law protections for religious liberty).

(d) An organization, whether faith-based or not, that receives Federal financial assistance shall not, with respect to services or activities funded by such financial assistance, 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. However, a faith-based organization receiving indirect Federal financial assistance need not modify any religious components or integration with respect to its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency 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. All organizations, whether faith-based or not, that participate in HHS awarding agency programs or services must carry out eligible activities in accordance with all program requirements (except where modified or

exempted by any required or appropriate religious accommodations) including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall disqualify faith-based organizations from participating in the HHS awarding agency's programs or services because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, or on grounds that discriminate against organizations on the basis of the organizations' religious exercise, as defined in this part.

(f) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in the Civil Rights Act of 1964, 42 U.S.C. 2000e-1 and 2000e-2 and the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), is not forfeited when the faith-based organization receives direct or indirect Federal financial assistance from an HHS awarding agency. An organization qualifying for such exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization. Recipients should consult with the appropriate HHS awarding agency program office if they have questions about the scope of any applicable requirement, including in light of any additional constitutional or statutory protections or requirements that may apply.

(g) In general, the HHS awarding agency 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 HHS awarding agency 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 so-

licitation. 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 HHS awarding agency program office to determine the scope of any applicable requirements. In HHS awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) 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;

(2) A statement from a State or other governmental 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 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;

(4) Any item described in paragraphs (g)(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 parent organization that the applicant is a local nonprofit affiliate; or

(5) 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 any of paragraphs (g)(1) through (4) of this section.

(h) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement HHS awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this part shall apply to all of the commingled

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funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

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

(j) Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service 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.

(k) If a pass-through entity, 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 pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

[85 FR 82146, Dec. 17, 2020]

§ 87.4 Severability.

Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof or the application of

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the provision to other persons not similarly situated or to other, dissimilar circumstances.

[85 FR 82147, Dec. 17, 2020]

APPENDIX A TO PART 87—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

(a) 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 this part and 42 U.S.C. 2000bb *et seq.*, the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious character, affiliation, or exercise.

(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, nondiscrimination, and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment of the U.S. Constitution, the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), the Coats-Snowe Amendment (42 U.S.C. 238n), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(a) and 2000e-2(e)), the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), the Weldon Amendment (e.g., Further Consolidated Appropriations Act, 2020, Public Law 116-94, 133 Stat. 2534, 2607, div. A, sec. 507(d) (Dec. 20, 2019)), or any related or similar Federal laws or regulations. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct financial assistance from the Department to engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Such an organization also may not, in providing services funded by the Department, 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.

[85 FR 82147, Dec. 17, 2020]

APPENDIX B TO PART 87—NOTICE OF AWARD OR CONTRACT

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue

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to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment of the U.S. Constitution, the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), the Coats-Snowe Amendment (42 U.S.C. 238n), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(a) and 2000e-2(e)), the Americans with Disabilities Act (42 U.S.C. 12113(d)(2)), section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), the Weldon Amendment (*see, e.g.*, Further Consolidated Appropriations Act, 2020, Public Law 116-94, div. A, sec. 507(d), 133 Stat. 2534, 2607 (Dec. 20, 2019)), or any related or similar Federal laws or regulations. Religious accommodations may also be sought under many of these religious freedom, nondiscrimination, and conscience protection laws.

(b) A faith-based organization may not use direct financial assistance from the Department to engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Such an organization also may not, in providing services funded by the Department, 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.

[85 FR 82147, Dec. 17, 2020]

PART 88—PROTECTING STATUTORY CONSCIENCE RIGHTS IN HEALTH CARE; DELEGATIONS OF AUTHORITY

Sec.

88.1 Purpose.

88.2 Definitions.

88.3 Applicable requirements and prohibitions.

88.4 Assurance and certification of compliance requirements.

88.5 Notice of rights under Federal conscience and anti-discrimination laws.

88.6 Compliance requirements.

88.7 Enforcement authority.

88.8 Relationship to other laws.

88.9 Rule of construction.

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APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND ANTI-DISCRIMINATION LAWS

AUTHORITY: 42 U.S.C. 300a-7 (the Church Amendments); 42 U.S.C. 238n (Coats-Snowe Amendment); the Weldon Amendment (*e.g.*, Pub. L. 115-245, Div. B, sec. 507(d)); 42 U.S.C. 18113 (Section 1553 of the Affordable Care Act); Medicare Advantage (*e.g.*, Pub. L. 115-

245, Div. B, sec. 209); the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f) (*e.g.*, Pub. L. 116-6, Div. F, sec. 7018); 22 U.S.C. 7631(d); 29 U.S.C. 669(a)(5); 42 U.S.C. 300gg-92; 42 U.S.C. 1302(a); 42 U.S.C. 18041(a) (Section 1321 of the Affordable Care Act); 42 U.S.C. 18081 (Section 1411 of the Affordable Care Act); 42 U.S.C. 18023 (Section 1303 of the Affordable Care Act); 26 U.S.C. 5000A(d)(2); 42 U.S.C. 18031; 42 U.S.C. 280g-1(d); 42 U.S.C. 290bb-36(f); 42 U.S.C. 1315; 42 U.S.C. 1315a; 42 U.S.C. 1320a-1; 42 U.S.C. 1320c-11; 42 U.S.C. 1395cc(f); 42 U.S.C. 1395i-3; 42 U.S.C. 1395i-5; 42 U.S.C. 1395w-22(j)(3)(B); 42 U.S.C. 1395w-26; 42 U.S.C. 1395w-27; 42 U.S.C. 1395x; 42 U.S.C. 1396a; 42 U.S.C. 1396a(w)(3); 42 U.S.C. 1396f; 42 U.S.C. 1396r; 42 U.S.C. 1396s(c)(2)(B)(ii); 42 U.S.C. 1396u-2(b)(3)(B); 42 U.S.C. 1397j-1(b); 42 U.S.C. 5106i(a); 42 U.S.C. 14406; 5 U.S.C. 301; 40 U.S.C. 121(c); 42 U.S.C. 263a(f)(1)(E); 45 CFR parts 75 and 96; 48 CFR chapter 1; 48 CFR parts 300 thru 370; 2 CFR part 376.

SOURCE: 84 FR 23263, May 21, 2019, unless otherwise noted.

§ 88.1 Purpose.

The purpose of this part is to provide for the implementation and enforcement of the Federal conscience and anti-discrimination laws listed in § 88.3. Such laws, for example, protect the rights of individuals, entities, and health care entities to refuse to perform, assist in the performance of, or undergo certain health care services or research activities to which they may object for religious, moral, ethical, or other reasons. Such laws also protect patients from being subjected to certain health care or services over their conscientious objection. Consistent with their objective to protect the conscience and associated anti-discrimination rights of individuals, entities, and health care entities, the statutory provisions and the regulatory provisions contained in this part are to be interpreted and implemented broadly to effectuate their protective purposes.

§ 88.2 Definitions.

For the purposes of this part:

Assist in the performance means to take an action that has a specific, reasonable, and articulable connection to furthering a procedure or a part of a health service program or research activity undertaken by or with another person or entity. This may include