



**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-5000

July 16, 2019

Dear Tribal Leader:

Please see the attached letter from Richard Youngblood, Director, Faith and Opportunity Initiative, HUD. The letter seeks your views on proposed changes to HUD's regulations governing the equal participation of faith-based (religious) organizations in HUD programs. Comments are due within 30 days. All comments should be sent by e-mail to [HUDRegsTribalConsult@hud.gov](mailto:HUDRegsTribalConsult@hud.gov)

**CENTER FOR FAITH-BASED AND NEIGHBORHOOD PARTNERSHIPS**

**RE: TRIBAL CONSULTATION ON HUD'S PROPOSED REGULATORY CHANGES TO  
RULES ON EQUAL PARTICIPATION OF FAITH-BASED ORGANIZATIONS IN HUD  
PROGRAMS**

HUD is developing a proposed rule to revise its regulations that cover the equal participation of faith-based (religious) organizations in HUD programs. These revisions are being undertaken to implement Executive Order 13831 ("Establishment of a White House Faith and Opportunity Initiative").

This letter is to inform you of the changes that HUD is proposing to make as part of this rulemaking effort. In accordance with HUD's Government-to-Government Tribal Consultation Policy, HUD is seeking your feedback on these proposed changes.

HUD will consider your comments in developing its proposed rule. Once the proposed rule is published in the Federal Register, you will have another opportunity to comment through the normal public comment process.

**Background:**

On December 12, 2002, President Bush signed Executive Order 13279 ("Equal Protection of the Laws for Faith-Based and Community Organizations"), which provides the legal basis for HUD's current rules on the equal participation of faith-based organizations in HUD programs. HUD undertook three rulemakings to implement Executive Order 13279 to codify these regulations at 24 C.F.R. § 5.109 and, for the Indian Community Development Block Grant program (ICDBG), at 24 C.F.R. §1003.600. These regulations were made applicable after tribal consultation in 2004. In summary, they provided the following:

- (1) Faith-based organizations are eligible on the same basis as any other eligible organization to participate in HUD programs and activities;
- (2) Organizations may not engage in inherently religious activities as part of the programs or services they carry out with direct HUD funds under a HUD program or activity;
- (3) Faith-based organizations that participate in HUD programs or activities may retain their independence;

- (4) A faith-based organization that participates in a HUD program does not forfeit its exemption from the Federal prohibition against employment discrimination on the basis of religion, as provided in Title VII of the Civil Rights Act of 1964;
- (5) Organizations that receive direct HUD funds may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion or religious beliefs;
- (6) HUD funds may not be used for acquisition, construction and rehabilitation of structures to the extent those structures are used for inherently religious activities; and
- (7) If a State, tribal, or local government chooses to commingle its own voluntarily contributed funds with direct Federal financial assistance or if the State, tribal, or local government is required to contribute matching funds to supplement the direct Federal financial assistance for a given activity, those funds are subject to the requirements of the rule.

On November 17, 2010, President Obama signed Executive Order 13559 ("Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations"). Executive Order 13559 amended Executive Order 13279, the legal basis for the current rules on the equal participation of faith-based organizations in HUD programs. The new Executive Order required that additional criteria be included in HUD regulations for all HUD programs.

HUD, along with eight other Federal departments and agencies, published a final rule on April 4, 2016, at 81 FR 19353, to amend its regulations to implement Executive Order 13559. The final rule required that faith-based providers give notice of the right to an alternative provider as specified in Executive Order 13559. The rule also required that such providers, but not other providers, give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including: (1) nondiscrimination based on religion; (2) the requirement that participation in any religious activity must be voluntary; (3) that such religious activity must be provided separately from the federally funded activity; and (4) that beneficiaries may report violations of these protections.

On May 3, 2018, President Trump issued Executive Order 13831 ("Establishment of a White House Faith and Opportunity Initiative"), which amended Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Executive Order 13831 eliminated the alternative provider requirement and the requirement of notice thereof specified in Executive Order 13559.

#### **Proposed Rulemaking and Tribal Feedback:**

HUD proposes to amend its regulations governing equal participation of faith-based organizations to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant federal statutes such as the Religious Freedom Restoration Act of 1993 (RFRA) (42 U.S.C. § 2000bb et seq.); Executive Order 13279, as amended by Executive Orders 13559 and 13831, and the Attorney General's Memorandum on Religious Liberty. Specifically, HUD is proposing to revise these regulations to do the following:

- (1) Delete the requirement that faith-based organizations that carry out programs and activities with direct Federal financial assistance provide written notice to beneficiaries and refer beneficiaries objecting to the organization's religious character to an alternative provider;

- (2) Clarify that a faith-based organization- that participates in HUD-funded programs or services retains its autonomy, right of expression, religious character, and independence from Federal, state, and local governments, outside of the application of other legitimate laws;
- (3) Clarify that faith-based organizations are not required to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations and that any restrictions on the use of grant funds apply equally to faith-based and non-faith-based organizations;
- (4) Require that HUD's notices of funding availability (NOFAs) and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding; and
- (5) Define the term "religious exercise" as it is defined in the RFRA and amend the definition of "indirect Federal financial assistance" to align more closely with the Supreme Court's definition in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

Given our government-to-government relationship, we are seeking your views as a tribal leader on these proposed changes. You may submit your comments to HUD within 30 days of the date of this letter by e-mail to [HUDRegsTribalConsult@hud.gov](mailto:HUDRegsTribalConsult@hud.gov), or by postal mail to:

US Department of Housing and Urban Development  
Faith and Opportunity Initiative  
409 3rd Street SW Suite 200  
Washington, DC 20024

Thank you for your continued interest and support of the Department's programs.

Sincerely,



Richard Youngblood  
Director, Faith and Opportunity Initiative

cc: Executive Director, Tribally Designated Housing Entity

Enclosures: Executive Order [13279](#)

Executive Order [13559](#)

Executive Order [13831](#)

[www.hud.gov/codetalk](http://www.hud.gov/codetalk)

[espanol.hud.gov](http://espanol.hud.gov)