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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 29-07

TO: ALL SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP) GRANTEES

FROM: BRENT R. ORRELL /s/
Acting Assistant Secretary

SUBJECT: Senior Community Service Employment Program (SCSEP) Participant Placement and Work with Faith-Based and Community Organizations

- Purpose.** To inform the Senior Community Service Employment Program (SCSEP) grantees about the Department of Labor's (DOL) equal treatment regulations at 29 CFR Part 2, Subpart D, which outline certain constitutional and other requirements related to the participation of faith-based organizations in DOL social service programs.
- References.** 29 CFR Part 2, Subpart D, Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; 20 CFR § 641.140, Provisions Governing the Senior Community Service Employment Program; OMB Circular A-122, Cost Principles for Non-Profit Organizations; OMB Circular A-21, F(4), Cost Principles for Educational Institutions, Operation and Maintenance Expenses.
- Background.** DOL's Center for Faith-Based and Community Initiatives (Center) was created when President Bush signed Executive Order 13198 on January 29, 2001. The purpose of the Center, and a key component of the President's Management Agenda for DOL, is to remove statutory, regulatory, and procedural barriers that prevent faith-based and community organizations (FBCOs) from partnering with DOL's programs. In 2001, an audit by DOL revealed that both faith-based and community-based grassroots organizations are often under-utilized as partners in the workforce investment system.

It is important that SCSEP grantees have the opportunity to work with as many organizations as possible, including faith-based organizations, as they assist seniors to get the training and work experience they need to re-enter the workforce. Faith-based organizations provide many support services and resources for seniors seeking to enter the workforce, including: being located in underprivileged communities with access to seniors seeking work not already reached by the workforce investment system; possessing close cultural connections and community credibility; serving as a ready source of community support and other private resources; providing individualized, supportive services that can effectively complement government

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services; and serving as a distribution network for information and materials to reach seniors most in need.

This guidance instructs all SCSEP grantees on how to successfully engage faith-based and community organizations in serving seniors through SCSEP. It provides the regulatory framework from within which faith-based and community organizations can participate and compete equally in the grantee network that provides much needed social services to SCSEP participants by following the equal treatment guidelines outlined below.

4. Faith-Based Organizations and SCSEP Placement. DOL’s equal treatment regulations at 29 CFR Part 2, Subpart D, outline certain constitutional and other requirements related to the participation of faith-based organizations in DOL’s social service programs, including SCSEP. These requirements as applied to SCSEP grantees require that:

- Faith-based organizations must be eligible, on the same basis as any other organization, to host participants for work-based training. DOL’s equal treatment regulations prohibit any discrimination for or against an organization on the basis of its religious character, affiliation, or lack thereof. Consistent with the equal treatment regulations, and the SCSEP regulations at 20 CFR § 641.140 defining host agency eligibility, as long as a faith-based organization is a 501(c)(3), is not a political party, and is otherwise eligible under the SCSEP regulations, it must receive the same consideration to serve as a “host organization” that any other non-profit organization would receive.
- Faith-based organizations hosting participants are prohibited from employing the participants to support or engage in any inherently religious activities, such as religious worship, instruction, or proselytizing.
- Faith-based organizations that participate in SCSEP may continue to carry out their missions and maintain their religious character. This autonomy includes, among other things, the right to use the organization’s facilities to provide DOL-supported social services without removing or altering religious art, icons, scriptures or other religious symbols; the right to govern themselves and to select board members on the basis of religion; and the right to express freely their views, including religious views.

5. Permitted and Prohibited Activities. 29 CFR Part 2, Subpart D, also outlines certain religion-related responsibilities that faith-based organizations, as well as other entities that receive DOL support, have under current law. The SCSEP statute and regulations also include a specific restriction on SCSEP projects involving the construction, operation, or maintenance of facilities used for religious worship or instruction. These responsibilities as applied to SCSEP grantees require that:

- Grantees administering the SCSEP program must not discriminate for or against a program participant or prospective participant on the basis of religion or religious belief. Further, program providers must not impermissibly restrict participants' rights to exercise religious freedom. While the right to exercise religious freedom does not necessarily require that participants who object to placement at a particular organization be given the choice of an alternative provider, grantees would do well to seek a diversity of providers, where reasonably possible, so as to find appropriate placements for all who need assistance.
- Grantees participating in the SCSEP program must ensure that no direct DOL financial assistance is used for inherently religious activities. If a host organization conducts religious activities, it must separate the religious activities in time or location from the SCSEP program. This means that participants may not be employed to carry out inherently religious activities or required to participate in any inherently religious activities. Participants, however, may voluntarily choose to participate in such activities, if they so wish. The host organizations must make clear that a decision to participate, or not, in such activities will in no way affect the quality of work-based training provided.

In accordance with the SCSEP statute and regulations, SCSEP participants also may not be employed to carry out the construction, operation, or maintenance of any facility used or to be used for religious instruction or religious worship. For example, SCSEP participants may not be employed to construct a church or synagogue, to operate or maintain the electrical systems that keep the church or synagogue running, or to perform janitorial services in such facilities. However, the construction, operation, and maintenance prohibition does not prevent a participant from working in a social services program that takes place in a place of worship or religious instruction (as long as the inherently religious activities prohibition is met). For example, a SCSEP participant could serve soup in a soup kitchen held in a church basement or be an aide in a day care center held in a synagogue.

Whether the construction, operation, and maintenance prohibition applies, that is, whether a facility is used or to be used as a place of religious instruction or religious worship, will depend on the specific circumstances of a placement and the nature of the facility. The construction, operation, and maintenance prohibition will apply to facilities where religious use is part of the inherent nature and purpose of the facility. On the other hand, the prohibition will not apply to secular facilities where use for religious worship or instruction is merely incidental or insignificant. To illustrate, SCSEP participants could not help construct, maintain, or operate a church or mosque. Such a facility is considered to be used as a place for religious instruction or religious worship because the inherent nature or purpose of the facility is religious worship or instruction. This would be true even if the church or mosque was used just a few hours a week for religious worship while serving the rest of the time as a homeless shelter. On the other hand, SCSEP participants could be involved in

construction, operation, or maintenance of a secular facility, such as a hotel, restaurant, library, school, or community recreation center, that is occasionally used for religious worship or instruction. In such cases, the inherent nature or purpose of the facility is not religious worship or instruction, and the actual religious use is not significant and is incidental to the facility's inherent purpose.

In some instances, it will not be so obvious whether a facility is used or to be used as a place for religious instruction or religious worship. Such determinations will be based on the particular circumstances and will be dependent on a variety of factors including but not limited to, the regularity of the religious use, the availability of the forum for public use, the nature of the other uses, and how the facility is operated and advertised. Grantees are advised to bring such questions to the attention of the grant officer so that the facts and circumstances can be evaluated on an independent basis.

- 6. Eligibility Flowchart and Examples for SCSEP Grants.** SCSEP participants can be placed with any 501(c)(3) entity, including faith-based entities, except political parties. Agencies that place the participants cannot discriminate between faith-based and other 501(c)(3) entities when making placement decisions, nor can such agencies or the host agencies discriminate for or against a program participant or prospective participant on the basis of religion or religious belief. Organizations that engage in inherently religious activities, such as religious worship, instruction, or proselytizing, must ensure that the religious activities are offered separately in time or location from Federally assisted activities, and that the participation of participants in such activities must be voluntary and not required.

Consistent with these requirements, participants generally may engage in any work activity, with two exceptions related to religion:

- (1) Like all programs receiving direct Federal support, employees whose positions are funded through SCSEP must not engage in any inherently religious activity, such as religious instruction, religious worship, or proselytizing while on the job; and
- (2) Participants must not provide construction, operation, or maintenance services in facilities inherently used or to be used for religious instruction or worship, as explained further above.

Use the narrative flowchart below (in addition, see the attached visual flowchart) to determine whether a proposed host agency position is eligible for a SCSEP placement in relation to the religious prohibitions.

Question 1: Will the participant be engaged in inherently religious activities such as providing religious instruction, leading worship services, or proselytizing?

No: Go to next question.

Yes: The activity is not eligible. Consult your lawyer or your grant coordinator for additional guidance.

Question 2: Will the participant be engaged in construction, operation, or maintenance? (*Operation and maintenance are activities undertaken to keep a building in an efficient operating condition, rather than add to a building's capital value.*¹)

No: The activity is eligible (*assuming other requirements are met*). No further analysis is needed under the religious restrictions.

Yes: Go to next question.

Question 3: Will the participant engage in this construction, operation, or maintenance in a facility where religious worship or religious instruction takes place or will take place?

No: The activity is eligible (*assuming other requirements are met*). No further analysis is needed under the religious restrictions.

Yes: Go to next question.

Question 4: Is religious instruction or worship part of the inherent nature and purpose of the facility (*such as for a church, synagogue, or religious school*)?

No: Go to next question.

Yes: The participant may not be placed in a position involving the construction, operation, or maintenance of the facility.

Question 5: Is the religious worship or instruction more than an incidental or insignificant activity in the facility?

No: The activity is eligible (*assuming other requirements are met*). No further analysis is needed under the religious use restrictions.

Yes: Further analysis and review by the grant officer will be necessary to determine if it is considered to be a facility used or to be used as a place for religious instruction or religious worship. Consult your lawyer or grant coordinator for additional guidance.

7. Action Requested. Grantees should distribute this guidance to all sub-recipients and to all host agencies to which this guidance applies.

¹ See, e.g., OMB Circular A-122 (maintenance activities “neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition”); see also Circular A-21, F(4) (“Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution’s physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving.”).

8. **Inquiries.** To ask questions regarding the information contained in this SCSEP guidance, please contact Judith Gilbert in the Office of Workforce Investment, Division of Adult Services at (202) 693-3938, or gilbert.judith@dol.gov, or contact Kristin Fortin in the Center for Faith-Based and Community Initiatives at (202) 693-6457, or fortin.kristin@dol.gov.

9. **Attachment.** SCSEP Legal Framework: Is a Proposed Host Agency Position Eligible for a SCSEP Placement in Relation to the Religious Prohibitions?