



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0001

CENTER FOR FAITH-BASED AND
NEIGHBORHOOD PARTNERSHIPS

November 19, 2014

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

Dear Tribal Leader:

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 13559 ("Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations").

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. After receiving your comments, HUD will publish a Notice of Proposed Rulemaking in the *Federal Register* and solicit public comment.

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:

Executive Order 13279 ("Equal Protection of the Laws for Faith-Based and Community Organizations") provides the legal basis for HUD's current rules on the equal participation of faith-based organizations in HUD programs. These regulations are codified 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 provide 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) Address the application of these rules to State, Tribal and local funds commingled with Federal funds.

On November 17, 2010, President Obama signed Executive Order 13559. 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 (see attached). The new Executive Order requires that additional criteria be included in HUD regulations for all HUD programs.

Proposed Rulemaking and Tribal Feedback:

HUD is required to review its existing regulations on the equal participation of faith-based organizations and to make changes to implement the principles in Executive Order 13559 in those regulations. Specifically, HUD is proposing to revise these regulations to do the following:

- (1) Define the terms “*direct Federal financial assistance*,” “*indirect Federal financial assistance*,” and “*intermediary*”;
- (2) State that decisions 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 religion or religious belief;
- (3) Replace “*inherently religious activities*” with “*explicitly religious activities*” and clarify that activities supported by direct Federal financial assistance must be separated in time or location from explicitly religious activities;
- (4) Explain the responsibilities of intermediaries (or pass-through entities); and
- (5) Add new beneficiary protections.

Given the unique conditions in Indian Country, 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 partnerships@hud.gov, or by postal mail to:

Paula A. Lincoln
Director, Center for Faith-Based & Neighborhood Partnerships
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 10184
Washington, DC 20410

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

Sincerely,



Paula A. Lincoln
Director, Center for Faith-Based and
Neighborhood Partnerships

cc: Executive Director, Tribally Designated Housing Entity

Enclosures: Executive Order 13279
Executive Order 13559