

February 18, 2020

U.S. Department of Health and Human Services  
Center for Faith and Opportunity Initiatives (Partnership Center)  
Attention: Equal Treatment NPRM (RIN 0991-AC13)  
Hubert H. Humphrey Building: Room 747D  
200 Independence Avenue SW  
Washington, DC 20201

**Re: Ensuring Equal Treatment of Faith-Based Organizations (RIN 0991-AC13)**

Dear Center for Faith and Opportunity Initiatives,

I write on behalf of the Union for Reform Judaism, whose nearly 850 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis, in response to the proposed rule, “Ensuring Equal Treatment of Faith-Based Organizations” (RIN 0991-AC13). This rule is an attack on religious freedom and will strip away religious freedom protections from marginalized communities who use government-funded social services. We urge the Department to withdraw it.

We also object to the unusually short 30-day period provided for public comment. The administration issued eight interconnected but distinct proposed regulations on the same day. Given the complexity and wide-ranging impact of these proposed rules, 30 days does not allow organizations such as ours a meaningful opportunity to comment.

The proposed rule would impede access to government-funded social service programs through several harmful changes to existing regulations, including eliminating the alternative provider and written notice requirements, expanding exemptions allowing religious organizations to discriminate in employment, broadening religious exemptions permitting providers to discriminate against beneficiaries, and eliminating voucher program safeguards. We are particularly concerned that this rule would threaten the ability of vulnerable beneficiaries – especially religious minorities, women, and LGBTQ people – to access critical social services. This rule impacts a wide variety of HHS programs, including refugee assistance, child welfare programs, runaway and homeless youth services, Head Start, sexual health and teenage pregnancy prevention programs, and community nutrition programs.

### **Impact of Eliminating the Alternative Provider and Written Notice Requirements**

This proposed rule would eliminate an existing requirement that providers refer beneficiaries who are uncomfortable accessing services at a religious provider to an alternative provider. Although religious social service organizations receiving government funding must offer only secular content, individuals may still feel uncomfortable obtaining services at certain providers and may wish to be referred elsewhere. By removing the alternative provider requirement, the proposed rule places a burden upon beneficiaries to identify alternative providers, which might result in beneficiaries being unable to access services at all. In light of other provisions within the proposed rule that would expand religious exemptions and eliminate the requirement for secular alternatives, the alternative provider requirement is even more critical.

The proposed rule also would also eliminate the requirement that social service providers inform beneficiaries of their religious freedom rights. Current regulations stipulate that a provider may not discriminate against beneficiaries based on their religion or coerce beneficiaries to participate in religious activities. Without appropriate notice, beneficiaries may not understand or be able to exercise their rights and may be vulnerable to proselytization, coercion, or discrimination without recourse. The written notice requirement imposes minimal administrative burden for providers; it should be preserved. Providers must prioritize the rights and well-being of their beneficiaries.

### **Impact of Allowing Taxpayer-Funded Employment Discrimination**

Title VII of the Civil Rights Act of 1964 allows religiously affiliated employers to prefer co-religionists in employment, and existing regulations extend this exemption to government-funded social service providers. The proposed rule would expand this exemption even further, allowing religious social service providers to “select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.”<sup>1</sup> Not only would the proposed rule allow providers to discriminate against employees from different faiths, it would also open the door to allowing providers to refuse to hire LGBTQ people, someone who uses birth control or had an abortion, someone who is pregnant and unmarried, or anyone else whom the provider believes violates its religious tenets.

### **Impact of Expanding Religious Exemptions and Discrimination Against Beneficiaries**

In addition to allowing faith-based providers to discriminate in employment practices, the proposed rule would allow discrimination against beneficiaries through multiple provisions expanding religious exemptions and the creation of new accommodations for religious providers. The proposed rule would also add special notices to grant

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<sup>1</sup> HHS, 85 Fed. Reg. at 2986 (to be codified at 45 CFR pt. 87.3(f)).

announcements and awards informing faith-based organizations that they can seek additional religious exemptions from federal laws and regulations governing the program. Such notices actively encourage discrimination against religious minorities, LGBTQ people, and women, whom providers may consider to be in violation of their religious beliefs. For example, community meal programs such as Meals on Wheels could refuse to deliver food to Jews, Muslims, and other religious groups who are elderly or have disabilities. Similarly, although this proposed rule does not directly address health care, it does impact health care support services such as transportation and translation services within a health care provider. As such, a transportation service may refuse to transport a transgender patient to an appointment to receive gender-affirming care, and a translator may refuse to assist a non-English speaker seeking reproductive health care.

### **Impact of Eliminating Voucher Safeguards**

Finally, the proposed rule would eliminate critical safeguards within voucher programs. Even while people may use vouchers for religious programs, current regulations stipulate that a secular alternative must always exist. Yet by redefining “indirect federal financial assistance,” the proposed rule would eliminate the requirement that beneficiaries have the option of a secular provider. The proposed rule would also allow religious providers to require that beneficiaries participate in religious activities and eliminate nondiscrimination protections, thereby allowing providers to discriminate on the basis of religion. As a result, someone using a voucher to participate in a substance abuse treatment program, an LGBTQ foster child living in a group home, or a young adult seeking services through Transitional Living for Homeless Youth might be forced to participate in religious activities such as Bible study, even if they do not subscribe to the provider’s religious beliefs, particularly if there is not a secular alternative available. Similarly, a refugee seeking assistance from the Discretionary Targeted Assistance Grant Program might be turned away because they belong to a different religion than the provider.

Jewish text and tradition compel our beliefs in the principles of nondiscrimination and the separation of church and state. Judaism teaches that all people are created *b’tzelem Elohim* (in the image of God) and deserve dignity and respect regardless of their religion, sex, sexual orientation, or gender identity. As it says in Genesis, “And God created human in God’s own image, in the image of God, God created them” (Genesis 1:27). Furthermore, throughout our history, the Jewish people have experienced religious persecution and discrimination. We understand the devastating effects and know that state-backed discrimination quickly becomes a stain on the nation. As we live conscious of this history and of being created in God’s image, we must work to ensure that nobody faces discrimination due to their religious beliefs or any other protected characteristic.

The proposed rule will make it possible for government-funded social service agencies to deny services to already marginalized communities. The health and well-being of

beneficiaries must come first, and taxpayer-funded social service providers should never be allowed to choose whom to serve. Allowing discrimination to supersede provision of services will endanger lives and harm the most vulnerable among us. People should not be denied care simply because of their religion or any other protected status.

I urge the Department to rescind this proposed rule and instead work to ensure that all people can access social services without facing discrimination.

Sincerely,  
Rabbi Jonah Dov Pesner