

February 18, 2020

Peter Mina
Deputy Officer for Programs and Compliance
Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

**Re: Equal Participation of Faith- Based Organizations in DHS's Programs and Activities:
Implementation of Executive Order 13831 (RIN 1601-AA93)**

Dear Mr. Mina,

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 entitled "Equal Participation of Faith- Based Organizations in DHS's Programs and Activities: Implementation of Executive Order 13831 (RIN 1601-AA93). This proposed rule is an attack on religious freedom and will harm marginalized communities – including LGBTQ people, women, and religious minorities – seeking citizenship preparation and disaster recovery services supported by the Department of Homeland Security. Accordingly, we urge the Department to withdraw the proposed rule.

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 includes several harmful changes that would authorize discrimination against marginalized communities. We are also concerned that the rule would strip the rights of beneficiaries and employees of faith-based organizations that provide government-funded social services. The proposal would also eliminate the alternative provider and written notice requirements, broaden religious exemptions permitting providers to discriminate against beneficiaries, and eliminate voucher program safeguards. The proposed rule would negatively impact a variety of government-funded

initiatives, including the Citizenship and Assimilation Grant Program (which helps lawful permanent residents prepare for U.S. citizenship) as well as FEMA grantee 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 expanding religious exemptions and eliminating the requirement for secular alternatives, the alternative provider requirement is even more critical.

The proposed rule 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 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 creating new accommodations for religious providers. The proposed rule would also add special notices to grant 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, a FEMA grantee could refuse to provide gender appropriate transitional housing to a transgender person in the wake of a natural disaster.

Impact of Eliminating Voucher Safeguards

Finally, the proposed rule eliminates 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, a same sex couple might be denied assistance applying for federal disaster relief benefits through a FEMA grantee. Similarly, a faith-based organization providing mandatory citizenship education classes might teach the classes in such a way that implies that Christianity is the preferred religion of the United States, which might be hostile to nonreligious people or members of minority faiths.

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 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 harm the most vulnerable among us. People should not be denied services or be subject to discrimination simply because of who they are.

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

Sincerely,
Rabbi Jonah Dov Pesner