

# FREEDOM FROM RELIGION *foundation*

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April 7, 2020

The Honorable Benjamin Carson  
Secretary of Housing and Urban Development  
Department of Housing and Urban Development  
451 7th St. SW  
Washington, D.C. 20410

Re: Comments opposing proposed rule entitled Equal Participation of Faith-Based Organizations in HUD Programs and Activities: Implementation of Executive Order 13831

Document Number: FR-6130-P-01; 24 C.F.R. Parts 5, 92 and 578;  
RIN 2501-AD91

Dear Secretary Carson:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to submit a public comment in opposition to the proposed rule, Equal Participation of Faith-Based Organizations in HUD Programs and Activities: Implementation of Executive Order 13831. FFRF is a national nonprofit organization with more than 31,000 members across the country. FFRF protects the constitutional separation between state and church and educates about nontheism.

FFRF strongly opposes this effort to lessen protections for HUD-funded service beneficiaries who object to receiving services from a religious service provider. No one should ever be forced to enter a religious environment, to endure religious rituals, or to support a religious organization in order to receive government-funded services.

This proposed rule enacts substantial changes to the current regulations. All of the proposed changes are hostile to true religious liberty, contribute to a dangerous mixture of religion and government, and sacrifice the well-being of service beneficiaries for no good reason. The Department should move in the opposite direction, abandoning this proposed rule and instead strengthening protections for nonreligious beneficiaries and others who object to the religious beliefs or practices of their government-funded service provider.

Particularly concerning is the proposed rule's removal of the requirement that religious service providers assist beneficiaries in finding alternative providers when requested to

do so. This change is unconscionable and unethical, removing a minimal responsibility on religious service providers, but losing an important protection for beneficiaries.

The proposed rule removes the requirement that religious service providers give written notice to beneficiaries indicating their religious affiliation and beneficiaries' right to request an alternative provider. Beneficiaries of government-funded services have a right to know whether they are receiving services from an organization that works to promote religious values that are inapposite to the beneficiaries' beliefs and values.

Under the new rule, beneficiaries will be blindsided by the religious nature of both their government-funded services as well as their service provider. This is unacceptable and violates the fundamental constitutional principle that American government must remain entirely secular. Among other areas, this will directly affect programs such as Housing Counseling Grants, Supportive Housing for the Elderly and for Persons with Disabilities, Continuum of Care, HOPWA, and CDBG.

The proposed rule also mischaracterizes the Supreme Court case, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). That case allowed funding of private religious schools provided that parents engaged in "true private choice" when selecting a religious school. Under the proposed rule, the same rationale is used to justify funding religious service providers *while allowing them to hide their religious character*, as well as removing the requirement that they accommodate beneficiaries with alternative providers. This directly undercuts the already questionable rule in *Zelman*. Beneficiaries cannot be said to engage in "true private choice" when the very nature of that choice is hidden from them and when they may have no choice at all other than a faith-based provider.

No one has a right to contract with the Department of Housing and Urban Development, and when religious organizations seek such a contract they must understand that the U.S. Constitution requires that extra steps be taken to ensure that government funding will not be inappropriately used to advance religion. There is no legitimate reason to deliberately erode these protections, and doing so strikes a blow at religious liberty by forcing taxpayers to support particular religious entities and forcing many beneficiaries to forego their right of conscience in order to receive a government-funded service.

Fundamentally, this proposed rule weaponizes "religious liberty" by focusing entirely on the religious preferences of service providers while ignoring the rights of beneficiaries. This focus is backward and will result in rampant discrimination under the guise of protecting "religious liberty." Qualifying beneficiaries have a right to HUD services that

cannot and should not be dependent on placating the religious views of providers, in violation of the beneficiaries' personal conscience.

Finally, the proposed rule inexplicably allows for discrimination as well, both in employment and in service. Christian organizations commonly discriminate against “the wrong kind of Christian.” Providers receiving HUD funds should not be allowed to turn away single mothers because the provider does not approve of sex outside of wedlock, for example, or to turn away anyone else based on the provider’s religious prejudices. Taxpayers should never be forced to fund discrimination. HUD can and should offer funding only to providers that meet the same discrimination standards that the government would itself be required to meet.

This proposed rule will negatively impact nonreligious beneficiaries in particular. Today, more than one-quarter of Americans, 26 percent, are religiously unaffiliated and nearly 30 percent are non-Christians, either practicing a minority religion or no religion at all.<sup>1</sup> Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. A recent survey found that 21 percent of Americans born after 1999 are atheist or agnostic.<sup>2</sup>

FFRF opposes the proposed rule in its entirety and urges the Department to abandon it and to instead take immediate action to protect the religious liberty of *all* service beneficiaries rather than catering to the religious preferences of service providers.

Very truly,



Annie Laurie Gaylor & Dan Barker  
Co-presidents

ALG/DB:rdj

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<sup>1</sup> Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at [www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf](http://www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).

<sup>2</sup> *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), <https://www.barna.com/research/atheism-doubles-among-generation-z/>.