

FREEDOM FROM RELIGION *foundation*

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March 14, 2023

SUBMITTED ELECTRONICALLY

Departments of Education, Homeland Security, Agriculture, Housing and Urban Development, Justice, Labor, Veterans Affairs, Health and Human Services, and Agency for International Development

Re: Comment in support of proposed rulemaking on faith-based organizations

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RIN #: 0412-AB10; 0510-AA00; 0991-AC13; 1105-AB64; 1290-AA45; 1601-AB02; 1840-AD46; 2501-AD91; 2900-AR23

To Whom It May Concern:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to comment in strong support of the proposed rules regarding the rights of beneficiaries of government-funded services with faith-based providers, and to provide input on how the rules could be strengthened. FFRF is a national nonprofit organization with more than 40,000 members across the country, including members in all 50 states and the District of Columbia. FFRF works to protect the constitutional separation between state and church, and educates about nontheism.

FFRF strongly supports this effort to strengthen protections for federally 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.

These proposed rules largely undo the damage of the current regulations, which 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. We appreciate the agencies' efforts to instead strengthen protections for nonreligious beneficiaries who object to the religious beliefs or practices of their government-funded service provider. The rules could be strengthened by prohibiting

employment discrimination with federal contracts and, most importantly, by providing a clear and effective enforcement mechanism for these rules.

FFRF supports the requirement that religious service providers give beneficiaries clear notice of their rights and assist beneficiaries in finding alternative providers when requested to do so. This requirement restores an important protection for beneficiaries and creates no substantial burden on providers. It is an entirely reasonable and minimal condition for entering into a service contract with the federal government.

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 current rule, beneficiaries can 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. This directly undermines access to a wide variety of critical services, and we appreciate the current administration's correction of this mistake.

The current rule relied on a mischaracterization of 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. The current rule applied the same rationale 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 undercut 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.

No one has a right to contract with the federal government, 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. These protections advance religious liberty by ensuring that taxpayers are not forced to support particular religious entities and that beneficiaries are not forced to forego their right of conscience in order to receive a government-funded service.

Fundamentally, this proposed rule corrects the governmental perspective by focusing primarily on the rights of beneficiaries rather than sacrificing those rights based on the religious preferences of service providers. This focus will avoid discrimination and will protect true religious liberty. Beneficiaries have a right to services that cannot and should not be dependent on placating the religious views of providers, in violation of the beneficiaries personal conscience.

The proposed rule narrows the religious exemption that inexplicably allows for employment discrimination. Christian organizations commonly discriminate against “the wrong kind of Christian.” When Aimee Madonna, a Catholic, sought to volunteer to provide foster care with Miracle Hill Ministries — the largest taxpayer-funded foster care agency in South Carolina — Miracle Hill refused because Madonna wasn’t an Evangelical Christian. It also rejected help from Jewish foster families. It would be preferable to eliminate this unwarranted government-funded discrimination entirely, but the proposed rules at least move in the right direction.

Finally, the one glaring weakness of the proposed rules is the lack of an effective enforcement mechanism. FFRF regularly receives complaints from beneficiaries who are harmed by faith-based organizations contracting with the federal government that discriminate, fail to give notice of their religious affiliation, and fail to assist beneficiaries in finding a reasonable secular alternative when one is sought. Instead of coming to a private non-profit organization like FFRF, these beneficiaries should be made aware of a transparent complaint process, and agencies should have the ability to promptly and effectively enforce these rules against faith-based organizations that disregard them. Even the strongest beneficiary protections would be hobbled without robust enforcement.

These proposed rules will positively impact nonreligious beneficiaries in particular. Non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 35 percent of Americans are non-Christians, and this includes the more than three-in-ten adult Americans (29 percent) who now identify as religiously unaffiliated.¹ 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.²

¹ About Three-in-Ten U.S. Adults are Now Religiously Unaffiliated Pew Research Center (Dec. 14, 2021), www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

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

FFRF supports the proposed rules and thanks the administration for protecting the religious liberty of *all* beneficiaries rather than catering to the religious preferences of service providers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne". The signature is fluid and cursive, with the first name "Ryan" being the most prominent part.

Ryan D. Jayne
Senior Policy Counsel