



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

April 13, 2020

Submitted via Regulations.gov

The Honorable Benjamin S. Carson, Sr.
Secretary
U.S. Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

**Re: Equal Participation of Faith-Based Organizations in HUD Programs and Activities:
Implementation of Executive Order 13831** [Docket #: HUD-2020-0017, RIN #: 2501-AD91]

Dear Secretary Carson:

Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing and Rights Task Forces. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We urge you to withdraw the proposed rule. The rule would, among other troubling changes, end the notice and referral requirements for faith-based social service providers, putting the interests of government-funded religious organizations above the needs of people seeking services, and risking undermining access to these critical services. People in need should not be faced with a choice between accessing essential services and programs or retaining their religious freedom protections, identity, or other rights.

People with disabilities and their families already face a national shortage of accessible and affordable housing, particularly the lowest-income people with disabilities. This proposed rule could erect yet another barrier to important programs, including Section 811 Supportive Housing for Persons with Disabilities. Faith-based organizations should not be permitted to take government funds and then place religious litmus tests on who they hire, who they serve, or which services they provide with those funds. Nor may they include religious content in their programs funded directly by the government. Clear safeguards are still needed to protect beneficiaries, especially against proselytizing and discrimination.

HUD must not allow religious organizations to accept grants and then discriminate with taxpayer funds. Rather than the approach in the proposed rule, HUD should retain the requirement that providers take reasonable steps to refer beneficiaries to alternative providers if requested. The Department should also retain the requirement that providers give beneficiaries written notice of

their religious freedom rights. HUD must not finalize regulatory language stating that providers can require people in voucher programs to participate in religious activities. HUD must, instead, retain the safeguard that ensures people who obtain services through a voucher program (or “indirect aid”) have at least one secular option to choose from. And contrary to the explanation in the preamble, the subsequent case law developments cited in the preamble do not justify the proposed changes.

CCD will continue our work to protect against forms of discrimination based on disability, ethnicity, race, sex, pregnancy, gender identity and expression, sexual orientation, religion, familial status, age, language, national origin, genetic information, or any other protected status. People with disabilities, like all people, have intersectional identities, and an attack on the civil rights of one group is an attack on the civil rights of all. We stand in solidarity with other marginalized groups in opposing this NPRM.

The Proposed Rule Would Eliminate Important Beneficiary Protections

The Alternative Provider Requirement

The current regulations ensure that people who seek services or program access who are uncomfortable at a provider because of its religious character will be referred to an alternative provider. The proposed regulations would eliminate this requirement. The rule would put the burden on potential beneficiaries to, as HUD describes it, “investigate alternative providers on their own.” This change has the potential to cause beneficiaries significant harm and could result in receiving no government services at all. Providers are more likely than beneficiaries to know of other providers. Removing the alternative provider requirement adds an additional, potentially insurmountable, hurdle for beneficiaries that could prevent them getting the help they need.

The Written Notice Requirement

The existing regulations require written notice to beneficiaries of their religious freedom rights, including that a provider cannot discriminate against beneficiaries based on their religion, force beneficiaries to participate in religious activities, and that beneficiaries have a right to seek an alternative provider. The proposed rule strips this requirement, leaving beneficiaries at risk. People using government-funded social services cannot exercise their rights if they aren’t aware they have them. HUD should not remove the requirement to share information with beneficiaries about their rights, and that providers must not subject them to discrimination, proselytization, or religious coercion in government-funded services.

Expansion of Religious Exemptions

The proposed rule not only strips out notice requirements and other religious freedom rights for beneficiaries, it would accomplish this while adding a requirement that the government provide written notice to faith-based organizations about their ability to get additional religious exemptions, including under the Religious Freedom Restoration Act. This could pave the way for providers to refuse to provide key services and could open the door to discrimination in taxpayer-funded programs. The proposed rule could allow providers to cite religion as a pretext for discriminating against people on other protected bases.

The Department adds language throughout the proposed rule that expands or adds new religious exemptions for faith-based providers, supposedly to add clarity. However, the vagueness of the

language and number of references to exemptions only create confusion. As currently written, there is no acknowledgment of the constitutional limits on the government’s ability to grant these exemptions. Any exemption the government grants “must be measured so that it does not override other significant interests”¹ or “impose unjustified burdens on other[s].”² These proposed changes put the interests of faith-based providers above those of program beneficiaries, whose own religious freedom rights and access to needed program services will be put at risk.

Discrimination in Employment

The government should not award funds to organizations that discriminate against qualified applicants for taxpayer-funded jobs because they cannot meet a religious litmus test, and the proposed rule bolters this possibility. The proposed rule states that a faith-based organization may select its “employees on the basis of their acceptance of or adherence to the religious tenets of the organization.”³ At the same time, the proposed rule fails to make clear that religious employers do not get a license to discriminate on grounds other than religion, even when motivated by religion.⁴

Undermining Important Safeguards in Voucher Programs

The proposed rule redefines “indirect aid” to eliminate the current requirement that the beneficiary must have the option of a secular provider. Again, if there is no requirement for an “indirect aid” program to have at least one adequate secular provider for beneficiaries, then the government is in effect adding a religious test to government services. Without requiring a secular option, people in need could be left with no choice and forced into a program that includes explicitly religious content and program requirements. No one should be forced to participate in a religious program, attend worship, or pray in order to get vital services. Yet when people who have to use a voucher to get services have no secular option to choose from, this may be their reality. HUD also proposes allowing organizations that accept “indirect” aid to require beneficiaries to participate in religious activities.⁵ This provision would make it even more likely that beneficiaries could be coerced into participating in religious activities.

Conclusion

¹ *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005); *see also* *Estate of Thornton v. Caldor, Inc.* 472 U.S. 703, 709-10 (1985) (“unyielding weighting” of religious interests of those taking exemption “over all other interest” violates Constitution).

² *Cutter*, 544 U.S. at 726. *See also* *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n. 8 (1989) (religious accommodations may not impose “substantial burdens on nonbeneficiaries”).

³ HUD, 85 Fed. Reg. at 8224 (to be codified at 24 CFR pt. 5.109(d)(2)).

⁴ *Ganzy v. Allen Christian Sch.*, 995 F. Supp 340, 250 (E.D.N.Y. 1998); *see also, e.g.,* *Hamilton v. Southland Christian Sch.*, 680 F.3d 1316 (11th Cir. 2012); *E.E.O.C. v. Fremont Christian Schools*, 781 F.2d 1362,1367 (9th Cir. 1986).

⁵ 85 Fed. Reg. at 8224 (to be codified at 24 CFR pt. 5.109(g)).

CCD urges HUD to withdraw the proposed rule. Thank you for the opportunity to comment.

Sincerely,

CCD Housing Task Force Co-Chairs

Molly Burgdorf
The Arc of the United States

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National Alliance on Mental Illness

CCD Rights Task Force Co-Chairs

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