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August 5, 2022

The Honorable Joseph R. Biden, Jr.
The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

I write to extend my support for your Administration's plans to engage in rulemaking with regard to the *Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities* final rules for nine departments and agencies.¹ These final rules, promulgated by the Trump Administration in 2020, updated the pre-existing regulatory framework governing how the federal government contracts with faith-based organizations. The updated rules included harmful policies that threaten to undermine vulnerable individuals' access to federally funded social service programs. The rules would do this by removing protections to secure individuals' religious liberty rights and allowing individuals to be subjected to religious discrimination and coercion in some circumstances. During the past nineteen months, your Administration has taken important steps to restore and proactively protect the civil rights of individuals to ensure fair treatment and equal opportunity. Federal social service programs are a vital part of our nation's safety net, enabling historically underserved individuals to access food, shelter, job training, and other services to improve their lives and the well-being of their families. No one should have to pass a religious test to receive benefits from or work in a federally funded social service program. Therefore, I urge the Administration to expeditiously revisit these harmful Trump-era rules and to restore and strengthen protections against religious discrimination and coercion in these programs.

¹ Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82037 (Dec. 17, 2020) (codified at 2 CFR 3474, 34 CFR Parts 75 and 76, 6 CFR Part 19, 7 CFR Part 16, 22 CFR Part 16, 22 CFR Part 205, 24 CFR Parts 5, 92, and 578, 28 CFR Part 38, 29 CFR Part 2, 38 CFR Parts 50, 61, and 62, 45 CFR Parts 87 and 1050).

Allowing individuals to face religious discrimination or coercion when accessing taxpayer funded social service programs undermines access to these services and forces individuals to choose between their faith, or no faith, and the services they are entitled to receive. Yet, the Trump-era faith-based rules do just that. For example, the U.S. Department of Education (ED) and the U.S. Department of Health and Human Services (HHS) issued rules that permit faith-based programs that receive federal funding in the form of vouchers to engage in religious discrimination against beneficiaries, the very individuals the programs are intended to assist.² As a result, faith-based organizations can refuse to offer services to individuals who are the “wrong religion.” Further, many of the Trump-era final rules explicitly allow faith-based organizations to *require* beneficiaries to participate in religious activities as a condition of services in any voucher type programs.³ These misguided policies not only violate the beneficiaries’ religious liberty rights, they also violate the principles articulated in Executive Order 13279, *Equal Protection of the Laws for Faith-Based and Community Organizations*, which includes protections against religious discrimination—such as the right to refuse to participate in religious activities—for beneficiaries of federal programs.⁴

The Trump-era faith-based rules also eliminated several provisions implemented by the Obama Administration that safeguarded beneficiaries’ rights to access federal programs without regard to religious coercion or discrimination. For example, the Obama-era provisions, which reflected recommendations from a diverse set of stakeholders, required providers to give beneficiaries a notice of their rights in writing and clarified that beneficiaries had the right to refuse to attend offered religious practices or services.⁵ They also provided information on how to report violations.⁶ Additionally, the Obama-era provisions offered beneficiaries the right to an alternative provider if they objected to the religious character of the initial provider.⁷ These consensus-based protections reflected the deep concern over how to ensure beneficiaries’ rights to access federally funded social services after a nearly 20-year troubling history regarding these issues. By eliminating these safeguards, the Trump-era final rules promoted the religious interests of social service operators over the needs and rights of individuals to access critical federally funded services.

² Under the final rules for the U.S. Department of Education and U.S. Department of Health and Human Services, the prohibition against beneficiary discrimination does not apply to voucher programs, only to direct grant programs. *See* 2 C.F.R. §§ 3474.15(a) and (f); 34 C.F.R. §§ 75.52(c)(3)(iii) and (e); 34 C.F.R. §§ 76.52(c)(3)(iii) and (e); 45 C.F.R. §§ 87.1(d) and 87.3(d).

³ In federally funded voucher programs, several of the final rules permitted faith-based organizations to require beneficiaries to attend religious activities. *See, e.g.*, 2 C.F.R. § 3474.15(f); 34 C.F.R. § 75.52(e); 34 C.F.R. § 76.52(e); 34 C.F.R. § 87.3(d); 45 C.F.R. § 87.3(d); 29 C.F.R. § 2.33(a); and 29 C.F.R. § 38.5(c).

⁴ *See* Sec. 2(d), Exec. Order No. 13,279, 67 Fed. Reg. 77,411 (Dec. 16, 2002).

⁵ The President’s Advisory Council on Faith-based and Neighborhood Partnerships (Advisory Council) issued a report with twelve recommendations—including the provisions at issue under the final rules—that had unanimous support. *See* President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships: Report of Recommendations to the President*, 140–41 (2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ofbnp-council-final-report.pdf> [hereinafter President’s Advisory Council].

⁶ *See, e.g.*, 45 C.F.R. § 87.3(i) (2016).

⁷ The President’s Advisory Council *supra* note 5, at 141.

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In addition, all of the Trump-era rules allow providers to discriminate against workers on the basis of religion in federally funded social service programs. Under this policy, essential workers such as social workers, soup ladlers, and counselors can be turned away because they practice a different faith or no faith at all. The ED and HHS final rules go even further by including language allowing providers to require that workers in federally funded programs adhere to the religious tenets of the organization.⁸ In contrast to the final rule issued by the U.S. Department of Labor, the ED and HHS final rules fail to make it clear that providers cannot use religion as a “proxy” to discriminate on the basis of other protected characteristics in their employment decisions such as treating women differently than men when offering employer benefits.⁹ Additionally, the HHS final rule points to the availability of a religious exemption under the *Americans with Disabilities Act (ADA)*¹⁰ but fails to inform providers of their obligations under section 504 of the *Rehabilitation Act of 1973*, which does not have a religious exemption, to refrain from discriminating against disabled individuals in employment when receiving Federal financial assistance.¹¹ Local social service programs supported with federal funds are a source of employment in communities. Individuals seeking employment with programs supported by taxpayer funds deserve protection from religious discrimination and coercion. These kinds of discriminatory practices shift the weight of the federal government from supporting victims of discrimination to supporting the so-called right to discriminate with federal funds. That is a profound change in the civil rights landscape where historically the power of the federal purse has been used to expand equal opportunity in federally funded programs and contracts.

Under the guise of religious freedom, the Trump-era rules promote a coordinated effort to advance the interests of religious providers at the expense of the religious liberty rights of beneficiaries and workers in federal social service programs. Now, more than ever, your Administration must be proactive to ensure that individuals, especially historically underserved individuals, have access to social services without religious discrimination or coercion and that workers in federally funded programs are not required to pass an employer’s religious test. I urge the Administration to expeditiously address these grievous policies that undermine the nation’s social safety net.

Thank you for your attention to this matter. If you have any questions or wish to discuss this matter further, please contact Theresa Thompson with the Committee on Education and Labor at Theresa.Thompson@mail.house.gov. Please direct all official correspondence and information relating to this request to the Committee’s Chief Clerk, Rasheedah Hasan, at Rasheedah.Hasan@mail.house.gov.

⁸ See 2 C.F.R. § 3474.15(g); 34 C.F.R. § 75.52(g); 34 C.F.R. § 76.52(g); and 45 C.F.R. § 87.3(f).

⁹ See 2 C.F.R. § 2.37; *EEOC v. Fremont Christian School*, 781 F.2d 1362 (9th Cir. 1986).

¹⁰ 45 C.F.R. § 87.3(f).

¹¹ 45 C.F.R. § 84.11.

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Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

Cc: Melissa Rogers, Executive Director, White House Office of Faith-Based and Neighborhood Partnerships