July 13, 2026

Re: Regulation for Federal Financial Assistance (91 Fed. Reg. 32198)

To Whom It May Concern:

On behalf of the undersigned members and supporters of the Coalition Against Religious Discrimination (CARD), thank you for the opportunity to comment on the Office of Management and Budget's proposed rule on "Regulation for Federal Financial Assistance." CARD strongly opposes the proposed changes to federal financial assistance policy.

With respect to religious freedom, the proposed changes would have two broad impacts. First, they would lead to sweeping religious exemptions for faith-based organizations receiving federal funds. These exemptions are neither required nor permitted by federal law. Second, the changes would weaponize religious liberty to punish lawful conduct and pressure funded entities into complying with the administration's preferred policies.

The proposed rule would make it harder for recipients of federal financial assistance to administer government programs and make it harder for people to get services they need.

Coalition Against Religious Discrimination (CARD)

CARD is a broad and diverse group of leading religious, civil rights, education, labor, health, LGBTQ+, and women's organizations formed in the 1990s to monitor legislative and regulatory changes impacting government partnerships with religious and other non-profit organizations and to oppose government-funded religious discrimination. Our coalition members appreciate the important role religiously affiliated institutions historically have played in addressing many of our nation's most pressing social needs, including in partnership with the government; indeed, many members of CARD are involved in this work. We also recognize that the separation of church and state is the cornerstone of religious freedom.

In our view, even as we believe that faith-based organizations need not give up their distinct religious identities to partner with the government, we also believe that effective government collaboration with faith-based groups does not require the sanctioning of government-funded religious coercion or discrimination. As explained by unanimous recommendations from the President's Advisory Council on Faith-Based and Neighborhood Partnerships in 2010: "fidelity to constitutional principles is an objective that is as important as the goal of distributing Federal financial assistance in the most effective and efficient manner possible."[1] Accordingly, we have long advocated for strong, clear, and constitutionally sound safeguards to govern partnerships between the government and faith-based social services providers.

Overview

Dozens of federal agencies administer federal grants and other financial assistance programs. In order to help standardize the implementation of federal financial assistance, the Office has issued guidance to federal agencies, which was consolidated into 2 CFR Part 200 in 2014. The guidance aims, in part, to create predictability and clarity for funding recipients to ensure that

[1] President's Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships: Report of Recommendations to the President* 127 (2010).

federal funding can efficiently meet the needs of its intended beneficiaries. The Office's proposed rule would remake this guidance into formal regulations and radically transform federal funding, which affects every aspect of our society.

The proposed rule could subject basic funding conditions to sweeping religious exemptions, potentially allowing funded entities to discriminate, deny service, and veto programming in the name of religion. Granting taxpayer funds to faith-based providers even when they will not meet program requirements or refuse to provide required services would directly undercut the regulation's purpose of creating predictability and clarity. Simultaneously, other proposed changes could allow decisionmakers to deny or rescind funding based on spurious allegations of religious liberty violations.

These changes would ultimately harm the people seeking access to government programs. Yet, the proposed rule spends no time considering beneficiaries' rights or ability to access federally funded services. Nor does it consider the Establishment Clause's prohibition on granting religious accommodations that harm others or impugn on their rights.[2]

The Proposed Rule Would Open the Door to Unchecked Religious Exemptions

Proposed Changes to 2 CFR § 200.300

The Office proposes sweeping changes to 2 CFR § 200.300 that would open the door to unchecked religious exemptions, even if funded entities fail to meet basic program eligibility requirements, fail to provide required services, or discriminate against program beneficiaries. These changes include:

- Adding a new sentence to subsection (a), which the preamble frames around religious liberty: "Consistent with Federal law, this includes managing and administering the Federal award to ensure that no person otherwise eligible will be unlawfully excluded from participation in, unlawfully denied the benefits of, or otherwise subjected to unlawful discrimination in the administration of Federal programs, activities, projects, assistance, and services."
- Creating entirely new subsection (c): "Non-discrimination against faith-based organizations. Federal agencies and pass-through entities may not discriminate against or in favor of an applicant on the basis of the organization's religious character, affiliation, exercise, or lack thereof, nor on the basis of conduct that would not be considered ground to favor or disfavor a similarly situated secular organization. Faith-based organizations are eligible to apply for Federal financial assistance on the same basis as any other eligible organization. Applicants that meet all eligibility requirements may be considered for a Federal award under a notice of funding opportunity."

[2] "At some point, accommodation may devolve into an unlawful fostering of religion." *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1987) (internal quotation marks omitted). To be lawful, "an accommodation must be measured so that it does not override other significant interests" or "impose unjustified burdens on other[s]." *Cutter v. Wilkinson*, 544 U.S. 709, 722, 726 (2005). *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 739 (2014) (Kennedy, J., concurring) (no accommodation should "unduly restrict other persons . . . in protecting their own interests, interests the law deems compelling"); *Holt v. Hobbs*, 574 U.S. 352, 370 (2015) (Ginsburg, J., concurring) (joining opinion because accommodation "would not detrimentally affect others"); *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709-10 (1985) (statute providing employees with "absolute and unqualified right not to work" on their Sabbath, without taking into account other workplace interests, "contravenes a fundamental principle of the Religion Clauses.").

Deficiencies in the Proposed Rule

The proposed rule seeks to incorporate language from other regulations, but makes troubling changes in doing so and fails to offer legitimate justifications for the necessity of these additions or even cite relevant underlying authorities.

First, the Office seeks to fold language into § 200.300(a) from Health and Human Services-specific guidance currently at 2 CFR § 300.300(d). The differences between the existing HHS guidance and the proposed rule, however, are significant. 2 CFR § 300.300 provides for a workable exemption process that allows HHS to evaluate exemption requests on a case-by-case basis while accounting for third-party harms and provides written notification to the recipient that explains the scope, applicable issues, and all other relevant terms of any exemption. The Office's proposed language in 2 CFR § 200.300 fails to do the same. Indeed, the HHS preamble makes clear that the new language would open the door to broad exemptions, stating that entities must "consider and provide religious or conscience-based exemptions" and "may not require application of particular provisions or requirements to specific contexts, procedures, or services where such [exemptions would] apply."

The Office's preamble goes even further, misstating federal religious liberty law to suggest that agencies and funding recipients must create blanket religious exemptions:

> Where [religious freedom protections] apply, Federal agencies, pass-through entities, recipients, and subrecipients should not structure internal procedures in a way that would require discretionary case-by-case approval of requests for an accommodation or exemption. A "case-by-case exemption procedure leaves religious organizations unable to predict their legal exposure" and does not "further[] any compelling antidiscrimination interests."

Despite the Office's assertion,[3] the Religious Freedom Restoration Act does not authorize agencies or funding recipients to issue blanket exemptions. RFRA is, inherently, an individualized inquiry. Pursuant to RFRA, a claimant must assert that a sincerely held religious belief has been substantially burdened.[4] If so, the government regulation must "further a compelling government interest" by using the "least restrictive means." Minimal burdens do not trigger RFRA protection, and even substantial burdens on religious exercise must be permitted where the countervailing interest is significant.

Ignoring RFRA's individualized sincerity and substantial burden analysis to require blanket exemptions is inconsistent with the text of the law and decades of judicial interpretation. Indeed, issuing blanket exemptions or accommodations without careful, individualized consideration of these factors would unconstitutionally favor religion.[5]

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[3] In support of its proposition, the Office cites an unpublished district court opinion that is ungrounded in either legal precedent or RFRA's text. *See Cath. Benefits Ass'n v. Kennedy*, No. 3:23-cv-00203-PDW-ARS (D.N.D. June 5, 2025), Dkt. 78 at 14.

[4] *See, e.g.*, *Pennsylvania v. Trump*, 795 F. Supp. 3d 607, 635 (E.D. Pa. 2025) (holding categorical religious exemption arbitrary and capricious where it lacked "RFRA's careful evaluation of sincere beliefs and substantial burdens"). *See also Real Alternatives, Inc. v. Sec'y Dep't of Health & Human Servs.*, 867 F.3d 338, 357-58, 358 n.23 (3d Cir. 2017); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 588 (6th Cir. 2018), *aff'd by Bostock v. Clayton Cnty*., 590 U.S. 644 (2020) (RFRA claims were not at issue in Supreme Court case).

[5] Granting a religious exemption without first objectively determining that there exists an identifiable, government-imposed burden on the claimant's religious exercise would violate the Constitution by favoring and promoting religion over nonreligion. *See Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 613 n.59 (1989); *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 334-35

Second, the Office proposes a new § 200.300(c), which seems to rely on multiple agencies' regulatory provisions that govern how the government partners with faith-based institutions to deliver government-funded social services,[6] but would add unsound language. It proposes: "Federal agencies and pass-through entities may not discriminate against or in favor of an applicant on the basis of the organization's religious character, affiliation, *exercise*, or lack thereof, nor on the basis of conduct that would not be considered ground to favor or disfavor a similarly situated secular organization." (emphasis added). The inclusion of religious exercise alongside religious character and affiliation is not constitutionally required.[7] In fact, the language suggests that an entity could seek a religious exemption from program requirements to engage in religious activities with taxpayer funds. The Constitution bars direct funding of religion.[8]

Finally, the government's ability to provide religious accommodations—including under RFRA—is not unlimited. The Establishment Clause commands that "an accommodation must be measured so that it does not override other significant interests," "impose unjustified burdens on other[s]," or have a "detrimental effect on any third party."[9]

Yet nowhere in the proposed rule does the Office discuss this "ongoing [constitutional] obligation[] regarding religious liberty."[10] Nor does the Office consider the rights, including religious freedom rights, of people who need access to government-funded services. Broad religious exemptions for government-funded entities would undermine the effectiveness of taxpayer-funded services. The costs would be borne by people for whom the services can be a matter of life and death, especially if exemptions lead to the denial of service.

Impact on Program Beneficiaries

The proposed rule repeatedly prioritizes religious liberty interests of taxpayer-funded entities over other compelling interests. In particular, the Office fails to consider key stakeholders, most notably people who use government-funded services.

As we have seen, overly broad exemptions can lead to discrimination and undercut federal funding objectives. In 2019 HHS misused RFRA to allow South Carolina to exempt faith-based

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(1987). It would impermissibly "single out a particular class of [religious observers] for favorable treatment and thereby have the effect of implicitly endorsing a particular religious belief." *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 145 n.11 (1987).

[6] *See, e.g.*, 45 CFR § 87.3 (HHS).

[7] The state may not discriminate against faith-based organizations because of their "religious character"—not religious exercise. *See Carson v. Makin*, 596 U.S. 767, 785 (2022) (quoting *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 487 (2020)) (clarifying that the First Amendment prohibits exclusion of participants "solely because they are religious,");*Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017) ("The Department's policy expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious *character*.") (emphasis added).

[8] *See, e.g.*, *Agostini v. Felton*, 521 U.S. 203, 228-30 (1997) (religious indoctrination); *DeStefano v. Emergency Hous. Grp., Inc.*, 247 F.3d 397, 412 (2d Cir. 2001) (religious coercion); *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 425 (8th Cir. 2007) (religious discrimination).

[9] *Cutter v. Wilkinson*, 544 U.S. 709, 722, 726 (2005); *Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 729 n.37 (2014). See also Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709-10 (1985); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989).

[10] 91 Fed. Reg. 32,198, 32,216 (May 29, 2026).

child welfare providers from a federal nondiscrimination requirement.[11] Despite receiving over half-a-million taxpayer dollars in one year alone, the largest taxpayer-funded foster care agency in the state rejected otherwise eligible Catholic, Jewish, and Unitarian couples who wanted to open their homes to foster children. Beyond the discriminatory impact on prospective parents, this also meant fewer homes for children in the state foster system.

In other contexts, recipients of federal financial assistance have asserted their right to access government grants and contracts even while refusing to provide, facilitate, give information about, or even refer beneficiaries for services to be provided under those grants and contracts.[12]

The Proposed Rule Would Exploit Religious Liberty Laws to Force Compliance With the Administration's Priorities

2 CFR § 200.206 currently requires decisionmakers to consider risk factors when making federal award determinations. These factors, which include "financial stability," "management systems and standards," "history of performance," "audit reports and findings," and "ability to effectively implement requirements," are focused on financial risk of funding applicants.

The Office proposes a radical departure from these factors to add subjective determinations that have nothing to do with financial risk, including "[e]ngaging in activities or initiatives that are inconsistent with religious liberty laws," alongside other "questionable practices."

The proposed language is improperly vague. The Office does not provide information on which religious liberty laws it is referring to, how it would determine "inconsistency," or what findings would be required. It states that "history of questionable practices" would be determined "based on publicly available and verifiable information." This language suggests that entities could be denied funding for behavior that does not violate the law, but is merely deemed "questionable," and for which no official finding of legal violation has occurred. Given the lack of clarity, individual decisionmakers could easily weaponize the provision to deny entities funding.[13] And, entities may avoid engaging in activities aimed at effective program implementation, or create blanket religious exemptions that undermine program effectiveness, to preserve funding.

Ultimately, such a provision would weaponize religious liberty laws to punish and chill lawful activities, even infringing on others' religious freedom.

Conclusion

The proposed rule would open the door to broad religious exemptions that harm the very people government-funded programs are designed to serve, resulting in discrimination and the

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[11] Letter from Steven Wagner, Principal Deputy Assistant Sec'y, Admin. for Child. & Fams. to Henry McMaster, S.C. Governor, Re: Request for Deviation or Exception from HHS Regulations 45 CFR § 75.300(c) (Jan. 23, 2019).

[12] *See* Comments Submitted by U.S. Conference of Catholic Bishops et al. to Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, 79 Fed. Reg. 77,768 (proposed Dec. 24, 2014) (codified at 45 CFR pt. 411) (Feb. 20, 2015).

[13] Language explaining changes to 2 CFR § 200.300(b) asserts without grounding that protections against discrimination based on gender identity "infringe[d] on fundamental religious liberties," demonstrating the types of behavior that agencies could try to punish through weaponized religious liberty allegations.

termination of critical services. For these reasons, we respectfully urge the Office to withdraw the Proposed Rule and preserve its existing guidance. Thank you for your consideration.

If you have questions, please contact Dena Sher, sher@au.org.

Sincerely,

AFT: Education, Healthcare, Public Services
Alliance of Baptists
American Civil Liberties Union
American Humanist Association
Americans United for Separation of Church and State
Baptist Joint Committee for Religious Liberty
Bend the Arc: Jewish Action
Center for Inquiry (CFI)
Cooperative Baptist Fellowship
Council for Global Equality
Human Rights Campaign
Interfaith Alliance
Jewish Council for Public Affairs
Lambda Legal Defense and Education Fund, Inc.
MAZON: A Jewish Response to Hunger
Movement Advancement Project
National Council of Jewish Women
National Women's Law Center
Network of Jewish Human Service Agencies
People For the American Way
Planned Parenthood Federation of America
The Secular Coalition for America
Union for Reform Judaism