



March 14, 2023

BY ELECTRONIC SUBMISSION

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

Re: Request for Public Comment Concerning Proposed Rule on Partnerships With Faith-Based and Neighborhood Organizations; RIN 1840-AD467, RIN 1601-AB02, RIN 0510-AA008, RIN 0412-AB10, RIN 2501-AD91, RIN 1105-AB64, RIN 1290-AA45, RIN 2900-AR23, RIN 0991-AC13

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed rule “Partnerships With Faith-Based and Neighborhood Organizations.”

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches and congregations in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and human dignity. Religious freedom is a bedrock value for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith.

The stated intention of this NPRM in relation to partnerships with faith-based and neighborhood organizations is to “promote maximum participation by beneficiaries and providers in the Agencies’ covered programs and activities and ensure consistency in the implementation of those programs and activities.” The agencies claim that the NPRM will (1) ensure “federally funded services and programs . . . reach the widest possible eligible population, including historically marginalized communities,” and (2) “address and correct inconsistencies and confusion raised by the 2020 Rule.”

Faith-based organizations are indispensable service-providers in meeting the needs of America’s most vulnerable populations. Without faith-based organizations, millions of Americans would not receive the critical services they need to thrive and flourish.

From services for mental health and addiction, to homeless shelters, to healthcare, to immigrant and refugee services, all across America, faith-based organizations are at the forefront of serving our country’s most needy communities.



Religious congregations provide 7.6 million volunteers to run 1.5 million social programs in America each year¹. And the impact of these groups continues to grow. Researchers Brian and Melissa Grim report that “religious organizations have tripled the amount of money spent on social programs in the last 15 years - to \$9 billion.² They also explain that 40% of the top 50 charities in the US are faith-based, with combined operating budgets of over \$45.3 billion.³

Demonstrating the sheer magnitude of faith-based organizations’ impact, these figures include “charities such as the Lutheran Services in America, which cares for six million people annually, or about one in every 50 persons in the United States, and Catholic hospitals, which care for one-in-six U.S. hospital patients”⁴ Additionally, thousands of faith-based foster care and adoption agencies across the country are leading the way in serving vulnerable children. And faith-based organizations — working directly in partnership with the US government — are responsible for resettling at least 70% of refugees in the United States.⁵

Christians are compelled by their faith to serve their community, but are equally compelled by their faith to adhere to religious convictions and tenets as they serve. Agencies should not adopt rules that force them to choose between these two deeply held beliefs.

For Christians, serving our most vulnerable neighbors is a biblical mandate (Galatians 2:10, Luke 14:12-14, James 1:27, Matthew 19:21). Just as our Lord Jesus came to serve us, we are to emulate our Savior and serve those in need.

Yet, our duty to serve is also coupled with a command to do so in a way that is consistent with our faith and conscience. Christians seek to follow Jesus in every area of life and see their entire lives as service to him, not merely their religious activities (Col. 3:17; 23–24; 1 Cor. 10:31). The religious freedom endowed by our Creator, enshrined in the U.S. Constitution, and protected by countless federal statutes, is essential, allowing religious Americans to live out the tenets of their faith while providing indispensable services to millions of vulnerable people.

The ERLC is deeply concerned about the NPRM as currently drafted, as it infringes on the rights of faith-based organizations by placing undue burdens on them if they seek to participate in federal programs.

Though the NPRM allows for faith-based organizations to receive federal funding, this rule infringes on the rights of faith-based organizations in its explicit attempts to separate the designated services offered by faith-based organizations from their various “religious activities.” This creates status-based discrimination against faith-based organizations due

¹ “The Socio-economic Contribution of Religion to American Society: An Empirical Analysis,” Grim, Brian & Grim, Melissa, *Interdisciplinary Journal of Research on Religion*, Volume 12, Article 3, 2016.

² *Id.*

³ Source: Faith-based charities identified by their self-description from a list of the 50 largest U.S. charities on the Forbes top charities list: <http://www.forbes.com/top-charities/list/>.

⁴ *Id.* The Socio-economic Contribution of Religion to American Society: An Empirical Analysis.

⁵ “The Faith Community’s Role in Refugee Resettlement in the United States,” Ebay, Jessica, et al., *Journal of Refugee Studies*, Sept. 2011



to the increased stipulations that they accommodate beneficiaries and adjust their programming. Additionally, the notice-and-referral requirements for faith-based organizations found in the NPRM requires faith-based organizations to provide referrals to other organizations that provide similar services if the patron disagrees with the religious views of the organization. Under the NPRM, faith-based groups' participation in the federal grant would be dependent on the availability of a secular group providing the same service nearby. This is both untenable and an infringement of the rights of the organization created solely on the basis of their religious beliefs. The notice and referral requirements place a unique and unfair burden on faith-based organizations.

In 2017, the Supreme Court in *Trinity Lutheran v. Comer* held that states may not prevent faith-based organizations from receiving state funds generally available to the public, simply by virtue of the fact that the organization is faith-based. In the majority opinion, Chief Justice Roberts wrote, "this Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.'" In light of *Trinity Lutheran*, the ERLC believes the Department needs to remove these additional burdens placed on faith-based organizations.

Additionally, the ERLC is gravely concerned about the NPRM's interpretation of protections for faith-based organizations under Title VII, as it fails to protect faith-based organizations' right to hire and fire employees based on adherence to tenets that are fundamental to their deeply held religious beliefs.

The NPRM makes clear that the agencies interpret the religious exemptions found in Title VII as "limited," only allowing religious organizations "to hire only people of a particular religion in the absence of any inconsistent statutes." The agencies explain "Title VII religious exemption does not permit such organizations to discriminate against workers on the basis of another protected classification, even when an employer takes such action for sincere reasons related to its religious tenets (such as those that might amount to discrimination on the basis of employees' sex)."

This interpretation of Title VII is out of step with religious liberty jurisprudence and threatens the free exercise of religion for faith-based organizations.

Judge Frank Easterbrook wrote in his concurrence in *Starkey v. Roman Catholic Archdiocese of Indianapolis* that Title VII "permits a religious employer to require the staff to abide by religious rules." He held that "a religious school is entitled to limit its staff to people who will be role models by living the life prescribed by the faith, which is part of 'religion' as §2000e(j) defines that word."

Faith-based organizations must be allowed to fully exercise their religious beliefs in all aspects of their organization, including, but not limited to, employment decisions.

Although the agencies claim the NPRM will lead to greater clarity for agencies and organizations, the ERLC believes the NPRM will have the opposite effect, leading to greater confusion for faith-based organizations, making them less likely to partner with the federal government in meeting the needs of our communities.



These regulations could bring the federal government to a standstill by excluding faith-based groups from providing services that serve the most vulnerable, underserved populations, including their indispensable roles in welcoming and caring for refugees and providing medical care to a significant percentage of Americans.

We urge the Agencies to retract the NPRM to not only fully respect the First Amendment rights of people of all faiths, but also allow those on the frontlines of serving the most vulnerable among us to continue doing the life-saving work they are best positioned to do.

Thank you for the opportunity to comment.

Respectfully submitted,

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President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention