



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Chapter I

42 CFR Chapters I and IV

45 CFR Subtitle A and Subtitle B Chapters II, III, IV, X, and XIII

[HHS-9928-RFI]

Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding

AGENCY: Center for Faith-Based and Neighborhood Partnerships, Office of Intergovernmental and External Affairs, HHS

ACTION: Request for Information

SUMMARY: The U.S. Department of Health and Human Services (HHS) is committed to delivering services to the public as efficiently and effectively as possible. Religious and faith-based organizations (hereafter “faith-based organizations”) are important partners with unique expertise that is crucial to advancing HHS’s mission of protecting and enhancing the health and well-being of Americans. HHS seeks comment from faith-based organizations and other interested parties to inform HHS on how it may best identify and remove regulatory or other barriers in order for these institutions to participate in HHS-funded or regulated programs, strengthen partnerships with faith-based organizations to improve service delivery to the American people, and ensure faith-based organizations are affirmatively accommodated and not excluded from publicly funded or conducted programs or activities because of HHS requirements that burden or interfere with their religious character or exercise.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments through <http://www.regulations.gov>.

2. *By email.* You may submit email comments to the following email address ONLY:

CFBNP@hhs.gov.

3. *By regular mail.* You may mail written comments to the following address ONLY: Center for Faith-Based and Neighborhood Partnerships, Office of Intergovernmental and External Affairs, U.S. Department of Health and Human Services, *Attention: RFI Regarding Faith-Based Organizations*, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

4. *By express or overnight mail.* You may send written comments to the following address ONLY: Center for Faith-Based and Neighborhood Partnerships, Office of Intergovernmental and External Affairs, U.S. Department of Health and Human Services, *Attention: RFI Regarding Faith-Based Organizations*, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Shannon Royce, (202) 690-6060

SUPPLEMENTARY INFORMATION: All submissions made must include the Agency name HHS-9928-RFI. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided.

I. Background

Executive Orders 13279 and 13559, issued by President George W. Bush and President Barack Obama, respectively, direct Federal agencies to “ensure equal protection under the laws for faith-based and community organizations” and “to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively to those in need.” Further, in Executive Order 13798, President Donald Trump declared that “the Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government...Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.” The President further declared that it will be “the policy of the executive branch to vigorously enforce Federal law’s robust protections for religious freedom.”¹

This commitment to faith-based organizations has extended across administrations because faith-based organizations have a long history of providing an array of important services to people and communities in need of health care, education, social services, and other charitable services in the United States. Religious faith, in its many expressions, is a key aspect of American life and culture. Because so many people live their lives through their faith commitments, faith-based organizations are uniquely positioned to understand and serve their neighbors and communities in culturally competent ways. These organizations are driven by faith to serve people of all faiths or none with compassion and commitment, and to provide them with food, housing, health care, family support, mental health support, addiction recovery,

¹ See also Memorandum from Attorney Gen. Jeff Sessions for All Executive Departments and Agencies, “Federal Law Protections for Religious Liberty” (Attorney General Memorandum) at 1 (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download> (“[r]eligious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law”).

counseling, education, and other essential services. According to a study by researchers at Georgetown University and the Newseum Institute, over 150 million Americans are members of over 344,000 religious congregations which sponsor a combined 1,621,000 health and social service programs.² The study estimated that religious organizations provide about \$1.2 trillion in socio-economic value to the U.S. every year.³ Furthermore, the mission driving these organizations can lead to improved services and innovative service delivery.

The U.S. Department of Health and Human Services (“HHS” or “the Department”)—the Federal Government’s largest grant-maker and the third largest Federal contracting agency—administers Federal funding with the overarching goal of delivering services, providing access to programs, and funding research that will improve the health and well-being of Americans. HHS’s Federal funding opportunities span a wide range of activities: from providing health care services to particular populations, to aiding child welfare programs and providing resources to the elderly, to funding child care and nutrition programs and helping refugees and asylees connect with the resources they need to become self-sufficient, to supporting biomedical and other scientific research.

Faith-based organizations have historically been a crucial component of HHS’s efforts by delivering charitable care to Americans in need and engaging in other worthwhile initiatives with the assistance of grant and contract funding provided by the Department. For instance, HHS awarded over \$817 million in funding to faith-based organizations across 65 competitive, non-formula grant programs in fiscal year 2007.⁴ Over half of all Continuing Care Retirement

² Brian Grim and Melissa Grim, “The Socio-economic Contribution of Religion to American Society: An Empirical Analysis,” *Interdisciplinary Journal of Research on Religion* 12, no. 3 (2016), <http://www.religjournal.com/pdf/ijrr12003.pdf>.

³ *Ibid*, Table 13.

⁴ The White House Office of Faith-Based and Community Initiatives, “Federal Competitive Funding to Faith-Based and Secular Non-Profits Fiscal Year 2007,” last accessed September 29, 2017, <https://georgewbush-whitehouse.archives.gov/government/fbci/data-collection-2007.html>.

Communities in the country were faith-based in 2013; almost 60 percent of the emergency shelter beds for the homeless in eleven major cities were provided by faith-based organizations in 2016; and one in six hospital patients were cared for in Catholic hospitals in 2015, to name just a few of the industries in which these groups are invaluable in advancing the Department's objectives.⁵ Faith-based organizations also provide significant assistance in natural disasters and emergencies.

HHS is dedicated to engaging in partnerships with a broad range of private sector organizations, some of which are faith-based and some of which are not, and we aim to administer our programs and funding without discrimination on the basis of religion. As part of achieving the Department's overall goals, HHS is fully committed to fostering robust and thriving partnerships with faith-based organizations that serve as either recipients or sub-recipients of Department funding or as partners with state or local agencies funded or regulated by HHS. This commitment is bolstered by the Attorney General's Memorandum for All Executive Departments and Agencies, "Federal Law Protections for Religious Liberty," issued on October 6, 2017 pursuant to Executive Order 13798. The Attorney General instructed that, "to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming," provided twenty principles to guide administrative agencies and executive departments in carrying out such tasks, and also provided guidance to such agencies and

⁵ Lisa McCracken, "Faith and the Not-For-Profit Provider," Ziegler Investment Banking, August 25, 2014, http://image.exct.net/lib/ff021271746401/d/4/zNews_Featured_082514.pdf; Byron Johnson, William H. Wubbenhorst, and Alfreda Alvarez, "Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities," Baylor Institute for Studies of Religion, (2017), available at <http://www.baylorisr.org/wp-content/uploads/ISR-Homeless-FINAL-01092017-web.pdf>; Catholic Health Association of the United States, "Catholic Health Care in the United States," last updated January 2017, <https://www.chausa.org/about/about/facts-statistics>.

department in implementing such religious liberty principles.⁶ Given the regulatory nature of many of HHS's programs, HHS notes that the Attorney General's guidance directed that, "[i]n formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens."⁷ Similarly, with respect to grants and contracts, the Attorney General's guidance instructs that "[a]gencies also must not discriminate against religious organizations in their contracting or grant-making activities," noting that "[a]bsent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization's Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations."⁸

Given the importance of faith-based organizations in carrying out the Department's mission of improving Americans' health and well-being, and the principles and directives in the Attorney General's Memorandum for All Executive Departments and Agencies, HHS solicits comments, through this request for information, to determine whether its existing regulations and guidance advance the Department's priority of cultivating partnerships with faith-based organizations that provide services to people in need or conduct other meaningful work. Because HHS primarily partners with faith-based organizations through grant and contract funding, HHS specifically seeks to identify any regulatory, guidance-based, or other requirements or conditions for grants or contracts that present barriers for faith-based organizations to participate in HHS-funded programs, and methods to ensure faith-based organizations are affirmatively accommodated, and not excluded from HHS-funded or conducted

⁶ Attorney General Memorandum at 1.

⁷ *Id.* at 7.

⁸ *Id.* at 8.

programs or activities because of HHS requirements that burden or interfere with their religious character or exercise.

In this request for information, HHS seeks input from the public and relevant stakeholders on potential changes that could be made to existing HHS regulations or guidance to ensure that faith-based organizations and their religious beliefs and moral convictions are properly accommodated, that faith-based organizations are not required to act contrary to their religious beliefs or moral convictions (as a recipient, sub-recipient, contractor, sub-contractor, or otherwise) or are otherwise not restricted, excluded, substantially burdened, discriminated against, or disproportionately disadvantaged in HHS-conducted or funded programs or activities (including those administered by state and local governments) because of their religious character, identity, beliefs, or moral convictions.

HHS also seeks input on whether faith-based organizations could face potential obstacles to participation in state or locally funded programs, or restrictions on their privately funded activities, because of HHS requirements imposed on state and local governments as a condition of receiving HHS funding.

Finally, HHS seeks input on what policies, procedures, and assessment tools HHS should develop to affirmatively further the accommodation, equal treatment, and respect for the religious exercise of faith-based organizations interacting with HHS or HHS-funded entities.

II. Solicitation of Comments

HHS solicits comments on potential changes to existing regulations or guidance that affirmatively assure the equal treatment of faith-based organizations and on the extent to which

faith-based organizations are beneficial to furthering the mission of the Department. Specifically, HHS seeks information that would assist it in pursuing the following objectives:

1. To remove obstacles to participation by faith-based organizations in the delivery of publicly funded services and activities. What changes in HHS regulations, guidance, or other documents (e.g. contracts and funding opportunity announcements) or processes might encourage faith-based organizations to participate in HHS-funded programs and services? What existing regulations, guidance, or other documents or processes deter such participation?
2. To ensure faith-based organizations—particularly those with a history of providing health, education, and other support to low-income people—are not excluded from eligibility for HHS funding. Which provisions in HHS regulations, guidance, or other documents directly or indirectly inhibit faith-based organizations from receiving HHS funds? How can the Department improve these regulations, guidance, or other documents? Are any faith-based organizations being restricted, excluded, substantially burdened, discriminated against, or disproportionately disadvantaged by HHS, an HHS grantee or contractor, or a state or local government entity administering an HHS-funded program or activity because of their religious character, identity, beliefs, or moral convictions?
3. To ensure that faith-based organizations receive accommodation, equal treatment, and respect for their religious beliefs and moral convictions from HHS or HHS-funded entities. What regulations, guidance documents, policies, procedures, and/or assessment tools should HHS develop to affirmatively further the accommodation, equal treatment,

and respect for the religious exercise of faith-based organizations interacting with HHS or HHS funded entities?

4. To improve our understanding of the role of faith-based organizations in implementing programs and activities that advance the goals and objectives of HHS. Describe the value, whether qualitative or quantitative, that faith-based organizations provide in improving the health and well-being of Americans and other populations eligible for public benefits and services. What would the consequences be if these organizations were no longer able to participate in the Department's programs or services or were denied eligibility for Federal funding? Do faith-based organizations provide unique value that could not easily be replicated by other recipients? Would adequate services be available to people in need in the absence of Federal partnerships with faith-based organizations?

This is a request for information only. Respondents are encouraged to provide complete but concise responses to any or all of the questions outlined above. This request for information is issued solely for information and planning purposes; it does not constitute a notice of proposed rulemaking or request for proposals, applications, proposal abstracts, or quotations, nor does it suggest that the Department will undertake any particular action in response to comments. This request for information does not commit the United States Government ("Government") to contract for any supplies or services or make a grant award. Further, HHS is not seeking proposals through this request for information and will not accept unsolicited proposals. Respondents are advised that the Government will not pay for any information or administrative costs incurred in response to this request for information; all costs associated with responding to this request for information will be solely at the interested party's expense. Not responding to this request for information does not preclude participation in any future rulemaking or

procurement, if conducted. It is the responsibility of the potential responders to monitor this request for information announcement for additional information pertaining to this request. We also note that HHS will not respond to questions about the policy issues raised in this request for information. HHS may or may not choose to contact individual responders. Such communications would only serve to further clarify written responses. Contractor support personnel may be used to review the responses submitted under this request for information. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this request for information may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This request for information should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become Government property and will not be returned. HHS may publicly post the comments received, or a summary thereof. While responses to this request for information do not bind HHS to any further actions related to the response, all comments may be posted online on <http://www.regulations.gov>.

III. Collection of Information Requirements

This document does not impose information collection requirements; that is, reporting, recordkeeping or third-party disclosure requirements. This request for information constitutes a general solicitation of comments. In accordance with the implementing regulations of the Paperwork Reduction Act (PRA) at 5 CFR 1320.3(h)(4), information subject to the PRA does not generally include “facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information

pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment." Consequently, this document need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 20, 2017.

Jane E. Norton

Director, Office of Intergovernmental & External Affairs

U.S. Department of Health and Human Services

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