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Office for Civil Rights

Office of the Assistant Secretary for Financial Resources

U.S. Department of Health and Human Services

200 Independence Ave., S.W.

Washington, D.C. 20201

**Re: Public Comment on Health and Human Services Grant Regulation,
RIN 0945-AA19**

Dear Sir or Madam:

First Liberty Institute ("First Liberty") submits this public comment on the proposed Health and Human Services Grants Regulation.

First Liberty is the largest legal organization in the nation dedicated exclusively to defending religious freedom for all Americans. We have provided *pro bono* representation to Catholic, Protestant, Islamic, Jewish, Buddhist, Falun Gong, Native American, and other religious practitioners. For over thirty years, First Liberty attorneys have worked to defend religious freedom before the courts, including the U.S. Supreme Court, as well as testifying before Congress and advising federal, state, and local officials about constitutional and statutory protections for religious liberty. As a part of our mission, First Liberty has advised numerous faith-based public service providers that seek to live out their deep religious convictions by selflessly serving poor, neglected, and underserved communities throughout the United States. In some places, these faith-based organizations, buoyed by their conviction that their calling to serve is from God, are the only providers still offering their services to their communities.

Forcing faith-based public service providers to choose between staying true to their faith and participating in Health and Human Services ("HHS" or the "Department") grants programs is both discriminatory to religious communities and harmful to those in need whom the faith-based providers cannot reach without an HHS grant.

The Proposed Grants Regulation

45 CFR § 75.300(c)

HHS proposes to revise 45 CFR § 75.300(c) to provide:

It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by federal statute.

First Liberty believes that this language is unnecessarily confusing and can be simplified to:

It is a public policy requirement of HHS that all HHS grants programs and services be administered consistent with all applicable federal law, including the U.S. Constitution and all applicable federal nondiscrimination and religious liberty statutes.

This simplified language is also more consistent with the language proposed for 75.300(d).

Under HHS's proposed formulation, First Liberty is concerned that "to the extent doing so" requires careful parsing to avoid confusion. While "doing so" must refer to "will be excluded," "denied," and "subjected," the tense change makes the sentence confusing. First Liberty suggests, instead, that "to the extent doing so is prohibited by federal statute" read "to the extent such exclusion from participation, denial of the benefits, or subjection to discrimination is prohibited by federal statute." While this framing is more verbose, it is less susceptible to being misread.

45 CFR § 75.300(e)

HHS proposes to add 45 CFR § 75.300(e) to provide:

In statutes that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender

identity, consistent with the Supreme Court’s decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), and other federal court precedent applying *Bostock’s* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. Paragraph (e) applies to the following HHS authorities that prohibit discrimination on the basis of sex: 8 U.S.C. 1522, Authorization for programs for domestic resettlement of and assistance to refugees; 42 U.S.C. 290cc–33, Projects for Assistance in Transition from Homelessness; 42 U.S.C. 290ff–1, Children with Serious Emotional Disturbances; 42 U.S.C. 295m, Title VII Health Workforce Programs; 42 U.S.C. 296g, Nursing Workforce Development; 42 U.S.C. 300w–7, Preventive Health Services Block Grant; 42 U.S.C. 300x–57, Substance Abuse Treatment and Prevention Block Grant; Community Mental Health Services Block Grant; 42 U.S.C. 708, Maternal and Child Health Block Grant; 42 U.S.C. 5151, Disaster relief; 42 U.S.C. 8625, Low Income Home Energy Assistance Program; 42 U.S.C. 9849, Head Start; 42 U.S.C. 9918, Community Services Block Grant Program; and 42 U.S.C. 10406, Family Violence Prevention and Services.

Many of these programs affect services and housing provided by and to persons from diverse cultures and geographic regions who hold millennia-old religious convictions that sex is an objective, binary category that cannot be changed by self-perception or medical intervention. Consequently, many faith traditions believe in the differences between males and females and the importance or even necessity of sex-segregated activities and housing. For example, here is a short summary of several religions’ views on issues relating to sexual orientation and gender identity:

- **Anglican Church in North America:** “Our foundation is the Scriptural truth that God made us male and female in His image—a profound unity with distinction (Genesis 1:27). God established marriage between male and female to fill the earth through procreation (Genesis 1:28).”¹
- **Assemblies of God:** “Genesis 1:26–31 is the record of God creating, blessing, and commanding humanity as male and female. Humans are created in the ‘image of God’ as male and female. . . . The biblical recognition of two distinct human sexes, female and male, from the creation of humanity as male and female in Genesis

¹ Anglican Church in North America, *Sexuality and Identity: A Pastoral Statement from the College of Bishops*, Jan. 2021, <https://anglicanchurch.net/sexuality-and-identity-a-pastoral-statement-from-the-college-of-bishops/>.

1:26–27, is affirmed by Jesus in Matthew 19:4 and Mark 10:6. . . . True human identity is what is being realized in relationship with Christ, body and an immaterial nature, which will culminate in the Resurrection. No account of humanity that asserts the interior life as the true self over against the body is a biblical understanding of humanity.”² “It should be noted at the outset that there is absolutely no affirmation of . . . changes in sexual identity found anywhere in Scripture. Male and female genders are carefully defined and unconfused.”³

- **Baha’i:** “Baha’u’llah teaches that the soul has no gender, race, or other physically ascribed identities. It is a spiritual reality that transcends all such distinctions. From this vantage point, Baha’is understood that the autonomy and welfare of human beings are not only determined by the laws and constraints of the natural world, but also by an objective spiritual existence that is integrally related to it.”⁴
- **Buddhism:** “Clinging to gender identity and letting conventional ideas about gender dictate one’s life thus contradicts all central Buddhist teachings. One would then also have to contend that egolessness is gendered, which would be a self-contradictory, illogical proposition.”⁵
- **Church of God in Christ:** “The opening book of the Bible tells us: ‘A man will leave his father and his mother and he must cleave to his wife and they must become one flesh’ (Genesis 2:24). The Hebrew word ‘wife’ connotes one who is a female human being. Jesus confirmed that those yoked together in marriage should be ‘male and female’ (Matthew 19:4). Therefore, God intended marriage to be a permanent and an intimate bond between a man and a woman. Men and women are designed to complement each other so they may be capable of satisfying each other’s emotional, spiritual, and sexual needs and desires.”⁶

² Assemblies of God, *Transgenderism, Transsexuality, and Gender Identity* (Adopted by the General Presbytery in Session August 5-7, 2017), <https://ag.org/Beliefs/Position-Papers/Transgenderism-Transsexuality-and-Gender-Identity>.

³ Assemblies of God, *Homosexuality, Marriage, and Sexual Identity* (Aug. 4–5, 2014), <https://ag.org/Beliefs/Position-Papers/Homosexuality-Marriage-and-Sexual-Identity>.

⁴ Baha’is of the United States, *What is the Baha’i View Pertaining to Identity?* <https://www.bahai.us/bahai-teachings-homosexuality/>.

⁵ Rita M. Gross, *Why Go Beyond Gender?*, SHAMBHALIA PUBLICATIONS (March 27, 2018), <https://www.shambhala.com/go-beyond-gender-excerpt-buddhism-beyond-gender/>.

⁶ General Assembly of the Church of God in Christ, Inc., *Marriage: A Proclamation to COGIC Worldwide*, <https://www.cogic.org/generalassembly/proclamation-on-marriage>

- **Church of Jesus Christ of Latter-day Saints:** “Church leaders counsel against elective medical or surgical intervention for the purpose of attempting to transition to the opposite gender of a person’s birth sex (‘sex reassignment’). Leaders advise that taking these actions will be cause for Church membership restrictions. Leaders also counsel against social transitioning. . . . Transgender individuals who do not pursue medical, surgical, or social transition to the opposite gender and are worthy may receive Church callings, temple recommends, and temple ordinances.”⁷
- **Confucianism:** “Traditional Confucian culture, the common base of social culture in the mainland of China, Taiwan and Vietnam, is a complex system of moral, social, political, and religious thought with regard to individual’s relationships with others and appropriate conduct. Its core concepts advocate filial devotion to family and priority of collective interests, self-cultivation of virtue and *unequal gender roles*.”⁸ “[T]he biological processes associated with female reproduction are ranked on a hierarchical scale reflecting women’s social position that conforms with Confucian gender hierarchies and social mores.”⁹
- **Daoism:** “Daoist philosophy . . . advocated for gender equality. This idea was reinforced in the symbolism of yin-yang by illustrating the complementary, dualistic, interdependent, and equal natures of the male (yang) female (yin) elements. One would not exist without the other and both have been equally important in creating and sustaining life. If one of the components were missing, reality would not be complete.”¹⁰

⁷ The Church of Jesus Christ of Latter-Day Saints, *What is the Church’s Position on Transitioning?*
<https://www.churchofjesuschrist.org/topics/transgender/understanding?lang=eng>.

⁸ Ersheng Gao. *How does Traditional Confucian Culture Influence Adolescence in Three Asian Cities?*, NATIONAL LIBRARY OF MEDICINE (Nov. 18, 2014),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4235616/#:~:text=Confucianism%20sees%20sexuality%20as%20taboo,of%20marriage%20is%20not%20condoned>.

⁹ Megan Pellouchoud, *Women’s Biological Threat to Confucian Social Order: An Examination of Gender Constructs through an Analysis of Pre-Modern Chinese Literature*, OREGON UNDERGROUND RESEARCH JOURNAL (2018),
https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/23514/OURJ_spring_2018_MPellouchoud.pdf?sequence=1&isAllowed=y.

¹⁰ Dessie Miller, *Celebrating the Feminine: Daoist Connections to Contemporary Feminism in China*, Master’s Projects and Capstones, University of San Francisco (2017), at 3,
<https://repository.usfca.edu/cgi/viewcontent.cgi?article=1607&context=capstone#:~:text=Daoism%20emphasizes%20gender%20equality%20by,be%20understood%20without%20the%20other>.

- **Falun Gong:** “With regards to sexual ethics, Falun Gong holds traditional views similar to the teachings of Buddhism or Christianity. In short, Falun Gong aims at taking attachments and desires lightly, including sexual desire, and stipulates that sexual relations should only occur in the context of monogamous, heterosexual marriage.”¹¹
- **Jehovah’s Witnesses:** “Are sexual practices and gender really a matter of personal choice? What does God’s Word have to say on these issues? ... According to the Bible book of Genesis, God himself created the differences between males and females.”¹²
- **Lutheran Church:** “[T]ransgenderism cannot be reconciled with Luther’s explanation of the first article of the Creed. When Lutherans confess that God has made us and all creatures, that he’s made our bodies and souls, and that it is our duty to thank and praise him for this, we are not merely confessing God as our creator. We’re also confessing him as our Lord, the one who is both responsible for making the universe and who has divine ownership over every atom of his creation, including our flesh.”¹³
- **Orthodox Church of America:** “The Bible says, ‘Male and female He Created them’ (Gen. 1:27). Our sexuality began with our creation. Since the Fall, however, we have become confused about what it means to be male and female. On one level there are clear biological differences such as reproductive organs, hormones, etc. On the level of social interaction, though, there is a variety of ways of distinguishing males from females, men from women, and vice versa.”¹⁴
- **Orthodox Judaism:** “Orthodox Judaism generally does not accept that a person can change gender/sex. However, for purposes of public order and propriety, Orthodox rabbis will sometimes accommodate trans people’s gender expressions in limited ways.”¹⁵

¹¹ Falun Dafa InfoCenter, “Intolerant”?, <https://faluninfo.net/misconceptions-intolerant/>.

¹² Watch Tower Bible And Tract Society of Pennsylvania, *The Bible’s Viewpoint: Alternative Life-Styles—Does God Approve?* (2022), <https://wol.jw.org/en/wol/d/r1/lp-e/102003726>.

¹³ The Council on Biblical Manhood and Womanhood, *A Lutheran View of Transgenderism* (Nov. 21, 2021), <https://cbmw.org/2021/11/21/a-lutheran-view-of-transgenderism/>.

¹⁴ Orthodox Church of America, “*In the Beginning...*” *Healing our Misconceptions*, <https://www.oca.org/the-hub/two-become-one/session-2-in-the-beginning-...-healing-our-misconceptions>.

¹⁵ Aaron H. Devor, *Transgender People and Jewish Law*, DE GRUYTER (2016), <https://www.degruyter.com/document/doi/10.1515/9783110434392-022/pdf>.

- **Presbyterian Church in America:** “Statement 2: Image of God. We affirm that God created human beings in his image as male and female (Gen. 1:26-27). Likewise, we recognize the goodness of the human body (Gen. 1:31; John 1:14) and the call to glorify God with our bodies (1 Cor. 6:12-20). As a God of order and design, God opposes the confusion of man as woman and woman as man (1 Cor. 11:14-15). While situations involving such confusion can be heartbreaking and complex, men and women should be helped to live in accordance with their biological sex.”¹⁶
- **Roman Catholicism:** According to Catechism of the Catholic Church, Sexual Identity (No. 2333), “Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life. The harmony of the couple and of society depends in part on the way in which the complementarity, needs, and mutual support between the sexes are lived out.”¹⁷ “Sexuality, by means of which man and woman give themselves to one another through the acts which are proper and exclusive to spouses, is not something simply biological, but concerns the innermost being of the human person as such.”¹⁸
- **Seventh-day Adventist Church:** “[T]he desire to change or live as a person of another gender may result in biblically inappropriate lifestyle choices. Gender dysphoria may, for instance, result in cross-dressing, sex reassignment surgery, and the desire to have a marital relationship with a person of the same biological sex. On the other hand, transgender people may suffer silently, living a celibate life or being married to a spouse of the opposite sex.”¹⁹
- **Shi’ah and Sunni Muslims:** “Prophet Mohammad (pbuh) has stated that: ‘men and women are twin halves of each other’ (Bukhari). This narration also brings home the fact that men and women are created from a single source. Furthermore, by using the analogy of twin half, the Prophet (pbuh) has underlined the reciprocal

¹⁶ *Forty-Seventh General Assembly of the Presbyterian Church in America Ad Interim Committee on Human Sexuality* (May 2020), <https://pcaga.org/wp-content/uploads/2020/05/AIC-Report-to-48th-GA-5-28-20.pdf>.

¹⁷ U.S Counsel of Catholic Bishops, *Gender Theory/Gender Ideology—Select Teaching Resources* (Aug. 7, 2019), https://www.usccb.org/resources/Gender-Ideology-Select-Teaching-Resources_0.pdf.

¹⁸ Catholic Catechism, No. 2361,

<https://www.usccb.org/sites/default/files/flipbooks/catechism/569/#zoom=z>.

¹⁹ Seventh-day Adventist Church, *Statement on Transgenderism*, <https://www.adventist.org/official-statements/statement-on-transgenderism/>.

and interdependent nature of men and women’s relationships.”²⁰ “There are fatwas from different Islamic countries which give rulings regarding sex change surgery or gender reconstruction surgery with regard to both the khunsa and the mukhannath (the transsexual). These fatwas generally agree that gender reconstruction surgery for the khunsa is permissible in Islam but prohibited in the case of the mukhannath.”²¹

- **Sikhism:** “Although it is true that the ‘idea of gender’ has changed wildly throughout different times and different cultures, we don’t see any specific examples of that type of deconstruction within the span of Sikh history. In fact, as mentioned earlier via the Manji-Pir system and Singh-Kaur, the solidification and acknowledgement of male and female genders is socially built into Sikh institutions. Norms of masculinity and femininity have indeed evolved, but *this does not mean that such norms did not exist* — in fact, traditional Sikh canon conveys the exact opposite.”²²
- **Southern Baptists:** “Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God’s creation.”²³ “God’s design was the creation of two distinct and complementary sexes, male and female (Genesis 1:27; Matthew 19:4; Mark 10:6) which designate the fundamental distinction that God has embedded in the very biology of the human race. . . . [G]ender identity is determined by biological sex and not by one’s self-perception—a perception which is often influenced by fallen human nature in ways contrary to God’s design (Ephesians 4:17–18). . . . [W]e extend love and compassion to those whose sexual self-understanding is shaped by a distressing conflict between their biological sex and their gender identity [W]e regard our transgender neighbors as image-bearers of Almighty God and therefore condemn acts of abuse or bullying committed against them . . . [W]e oppose efforts to alter one’s bodily identity (e.g.,

²⁰ *Marriage in Islam*, Why Islam? Facts about Islam, <https://www.whyislam.org/social-issues/marriage-in-islam/>.

²¹ Ani Amelia Zainuddin, et al, *The Islamic Perspectives of Gender-Related Issues in the Management of Patients with Disorders of Sex Development*, NATIONAL LIBRARY OF MEDICINE (April 21, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5272885/>.

²² Jung Nihang, *The Manipulation of Gurbani and the Sikh Gurus for Gender Politics*, May 13, 2021, <https://jodhsingh.medium.com/the-manipulation-of-gurbani-and-the-sikh-gurus-for-gender-politics-77225b1c9cb7> (emphasis added).

²³ Baptist Faith & Message 2000, <https://bfm.sbc.net/bfm2000/#xviii>.

cross-sex hormone therapy, gender reassignment surgery) to refashion it to conform with one's perceived gender identity."²⁴

Absent adequate religious liberty protections, the proposed rule will force participants controlled by religious organizations such as these to stop providing the vital humanitarian and mental health services covered by proposed 45 CFR § 75.300(e). Unfortunately, the proposed rule's religious liberty protections are not adequate.

45 CFR § 75.300(f)

HHS proposes to add 45 CFR § 75.300(f) to provide:

(1) At any time, a recipient may notify the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR) of the recipient's view that it is exempt from, or requires modified application of, certain provisions of this part due to the application of a federal religious freedom law, including the Religious Freedom Restoration Act (RFRA) and the First Amendment.

(2) Once the awarding agency, working jointly with ASFR or OCR, receives such notification from a particular recipient, they shall promptly consider those views in responding to any complaints, determining whether to proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant provisions of this part, or in responding to a claim raised by the recipient in the first instance, in legal consultation with the HHS Office of the General Counsel (OGC). Any relevant ongoing compliance activity regarding the recipient shall be held in abeyance until a determination has been made on whether the recipient is exempt from the application of certain provisions of this part, or whether modified application of the provision is required as applied to specific contexts, procedures, or services, based on a federal religious freedom law.

(3) The awarding agency, working jointly with ASFR or OCR, will, in legal consultation with OGC, assess whether there is a sufficient, concrete factual basis for making a determination and will apply the applicable legal standards of the relevant law, and will communicate their determination to

²⁴ Southern Baptist Convention, *On Transgender Identity*, June 1, 2014, <https://www.sbc.net/resource-library/resolutions/on-transgender-identity/>.

the recipient in writing. The written notification will clearly set forth the scope, applicable issues, duration, and all other relevant terms of the exemption request.

(4) If the awarding agency, working jointly with ASFR or OCR, and in legal consultation with OGC, determines that a recipient is exempt from the application of certain provisions of this part or that modified application of certain provisions is required as applied to specific contexts, procedures, or services, that determination does not otherwise limit the application of any other provision of this part to the recipient or to other contexts, procedures, or services.

While First Liberty supports the explicit inclusion of religious protections in 45 CFR § 75.300, these proposed specific protections are unlikely to provide the assurance that religious organizations need to continue to serve. Effectively, these proposed religious liberty provisions provide nothing more than the ability to seek an advisory opinion from HHS as to whether a religious exemption would apply in a given circumstance. But, as noted in the NPRM's Preamble, HHS has granted and then withdrawn such advisory opinions in the past based on the Department's fluctuating understanding of federal religious liberty law.

The lack of any objective criteria in the proposed religious liberty provisions also puts the onus on the religious provider to notify HHS of its religious objection and to seek the opinion from HHS. Other departments have used such a scheme to collect religious exemption or accommodation requests and then post them publicly, leading to such religious organizations becoming targets of individuals with anti-religious animus. To avoid this, HHS should include privacy protections for any religious objector who seeks any determination under § 75.300(f).

HHS should also include a timeframe for a response to any request for a determination under § 75.300(f). Because a religious provider needs clarity as to whether their religious conduct is protected, the potential for a religious provider to be left in limbo, unable to take long-term actions while awaiting such a determination, presents an opportunity for discrimination against religious organizations by simply sitting on their request indefinitely. First Liberty proposes a 30-day deadline for HHS to respond to such requests in accordance with Section 504 regulatory provisions.

Additionally, HHS should establish at least some objective criteria for a religious safe-harbor. At present, the proposed rule provides, “The awarding agency . . . will . . . assess whether there is a sufficient, concrete factual basis for making a determination [as to whether a federal religious liberty law is applicable] and will apply the applicable legal standards of the relevant law, and will communicate their determination to the recipient in writing.” This provision, however, provides no actual guidance for religious organizations who are concerned about whether a federal protection for religious will or will not apply. And given HHS’s history of granting and then withdrawing such opinions based on alternating views of, for example, the applicability of the Religious Freedom Restoration Act (“RFRA”), even the provision of such a determination is of questionable utility for religious providers. Furthermore, while the application of RFRA is often fact specific, many of the programs covered by the proposed § 75.300 include their own religious exemption or accommodation provisions that are not in the form of a fact-specific balancing test. For example, 42 U.S.C. § 9920 provides many explicit and absolute religious protections for religious organizations that participate in the Community Services Block Grant.

Providing clear and swift guidance for religious participants in these programs will allow these religious participants to continue serving throughout America. The less clarity there is, however, and the longer such determinations take, the less likely religious organizations will be able to take actions—especially significant long-term actions—without first having to litigate to get a determination of their rights, if they continue serving at all.

The Regulatory Impact Analysis

The Department needs to conduct a more thorough regulatory impact analysis. The broad reinterpretation of how to administer these grants unduly interferes with the exercise of the governmental functions of State, local, and tribal governments in the areas of health and human services. Eligible recipients—which include the 50 States; Washington, D.C.; other local governments; and territories of the United States—differ. These jurisdictions have their own religious liberty laws. HHS needs to examine all state, local, and tribal laws on health, family, and child welfare that cross-cut with these grants to determine whether the proposed rule would be unconstitutionally commandeering. The proposed rule does not address the details of how the new proposed rule would be interpreted in conjunction with text of religious discrimination prohibitions, equal treatment of faith-based organizations provisions, and statements of legislative purpose as regards religion.

Some jurisdictions have laws providing more protection for the religious liberty and equal treatment of faith-based organizations than the federal government. HHS should not promulgate a regulation that rolls back civil rights.

Thorough tribal consultation is also necessary to ensure Indian tribes, tribal organizations, tribal colleges, and individual Native Americans are protected under the American Indian Religious Freedom Act and the Indian Religious Freedom Act, and that HHS respects their sovereignty and exercise of beliefs. In addition to the primary grant recipients, this proposed rule would have cascading impacts on subrecipients, pass-through entities, and the ultimate beneficiaries. State associations, national partners, resources centers, and community action agencies involved in these grants may add another layer of complexity in understanding how this rule applies. HHS should not insert a significant change into an ASFR regulation, because the housekeeping statute authorizes regulation of the operations of HHS, not actors outside the HHS Secretary's authority. Furthermore, the use of block grant vehicles indicates Congressional intent for programs to be administered with wide discretion at the state level, with minimal federal interference.

HHS also needs to properly consider the impact on small entities for each of the grants. Programs in Titles VIII and IX of the Public Health Service Act impact many sectors of the economy in different ways. In education, HHS needs to assess the impact on faith-based nursing schools, medical schools, academic health centers, consortia, and health training centers. In health care, HHS should address the impact on faith-based managed health care centers, health care facilities, and hospitals. People of faith also are recipients of grants, so HHS should examine the impact on students, trainees, graduates, and faculty. There are religious Americans who are pharmacists, dentists, nurse practitioners, nurses, osteopathic, allopathic, health, medicine, nurses, physician assistants who have different religious beliefs about bioethics. Furthermore, the proposed rule does not address how the government's interpretation may affect accreditation and certification of these professionals.

Faith motivates many people to serve others. The highly religious volunteer at a rate of 45% (compared to only 28% for those not highly religious), and 23% of volunteers serve mainly through a religious organization or house of worship.²⁵ The highly religious also donate money, time, or goods to help the poor at a rate of 65% compared to only 41% of all other U.S. adults, and more people—across all age groups—volunteer in religious

²⁵ Michael Lipka, *How highly religious Americans' lives are different from others*, PEW RESEARCH CENTER (Apr. 12, 2016).

settings than any other.²⁶ Jewish, Muslim, Hindu, Catholic, and Protestant groups have all in different ways played critical roles in developing urban areas of the United States.²⁷

In substance abuse and prevention programs, 84% of scientific studies show that faith is a positive factor in addiction prevention or recovery.²⁸ Furthermore, church-based social support has demonstrated positive outcomes for African Americans in need of mental health services.²⁹ Given that high rate of success, 73% of addiction treatment programs in the United States include a spirituality-based element.³⁰ Research found that treating spiritual needs of patients may enhance recovery.³¹

With regard to prevention of domestic violence, couples who share the same religious commitment are less likely to commit acts of domestic violence.³² Men who attend religious services at least weekly are less than half as likely to commit an act of violence against their partners as their peers who attend once yearly or less.³³ Regular attendance at religious services has a strong and statistically significant inverse association with the incidence of domestic abuse.³⁴

²⁶ Terry A. Wolfer, Dennis R. Myers, Edward C. Polson, and Betsy Bevis, *Baby Boomers as Congregational Volunteers in Community Ministry*, 4:66 RELIGIONS 8 (2017).

²⁷ Paul D. Numrich and Elfriede Wedam, RELIGION AND COMMUNITY IN THE NEW URBAN AMERICA, New York: Oxford University Press (2015).

²⁸ Brian J. Grim and Melissa E. Grim, *Belief, Behavior, and Belonging: How Faith is Indispensable in Preventing and Recovering from Substance Abuse*, 58 J. RELIG HEALTH 1713 (2019).

²⁹ Christopher G. Ellison, Reed T. DeAngelis, and Metin Güven, *Does Religious Involvement Mitigate the Effects of Major Discrimination on the Mental Health of African Americans?* RELIGION AND MENTAL HEALTH OUTCOMES (Sept. 2017).

³⁰ Grim, B.J., Grim, M.E. *Belief, Behavior, and Belonging: How Faith is Indispensable in Preventing and Recovering from Substance Abuse*. J Relig Health 58, 1713–1750 (2019). <https://doi.org/10.1007/s10943-019-00876-w>

³¹ Paul S. Mueller, M.D., David J. Plevak, M.D. and Teresa A. Rummans, *Religious Involvement, Spirituality, and Medicine: Implications for Clinical Practice*, 76 MAYO CLINIC PROC. 1225, 1235 (2001).

³² Christopher G. Ellison, John P. Bartkowski, and Kristin L. Anderson, *Are There Religious Variations in Domestic Violence?* 20:1 J. of Family Issues 87 (January 1999).

³³ Christopher G. Ellison and Kristin L. Anderson, *Religious Involvement and Domestic Violence Among U.S. Couples*, 40:2 J. FOR THE SCIENTIFIC STUDY OF RELIGION 269 (June 2001).

³⁴ Lisa D. Pearce and William G. Axinn, 63:6 *The Impact of Family Religious Life on the Quality of Mother-Child Relations*, AMERICAN SOCIOLOGICAL REV. 810-828. (December 1998).

People of faith have been found to be less likely to live in poverty,³⁵ cheat on their partners,³⁶ abuse their partners,³⁷ or divorce.³⁸ Americans who regularly attend services at a church, synagogue, temple, or mosque have increased longevity because support in their faith community improves and helps them maintain good health behaviors, mental health, and social relationships.³⁹ Research also shows that that greater general religiousness is linked to better health protective attitudes and behaviors in the general population.⁴⁰

Need for Additional Comment

Given the complicated grant programs, need for additional assessment of impact, and significant issues of intersecting applicable laws, HHS should consider alternatives to finalizing this rule as proposed. In addition to retaining the status quo, HHS should evaluate pursuing a request for information, holding regional roundtables or task forces, conducting a regulatory review of each grant statute, or fielding a survey of all the relevant populations. A sixty-day comment is insufficient time to fully assess the impact on people of faith and their Constitutional rights. If HHS determines to proceed with regulating, HHS should address the ambiguities in this proposal and open for an additional public comment period.

Conclusion

First Liberty is encouraged that the proposed rule seeks to explicitly recognize the important role of federal religious liberty protections in the administration of HHS grants. The proposed religious protections, however, do not provide the clarity necessary to achieve this goal. Many religious objections can be addressed by providing details in the regulation itself, and would avoid years of costly litigation and unnecessary delay to the beneficiaries of these vital health and human services.

³⁵ Nicholas Wolfinger and W. Bradford Wilcox, *SOUL MATES: RELIGION, SEX, LOVE, AND MARRIAGE AMONG AFRICAN AMERICANS AND LATINOS*, New York, NY: Oxford University Press (2015).

³⁶ Amy Burdette, Christopher Ellison, Darren Sherkat, and Kurt Gore, *Are There Religious Variations in Marital Infidelity?*, 28 *JOURNAL OF FAMILY ISSUES* 1553-1581 (2007).

³⁷ W. Bradford Wilcox, *Soft Patriarchs, NEW MEN: HOW CHRISTIANITY SHAPES FATHERS AND HUSBANDS*, Chicago, IL: University of Chicago Press (2004).


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Sincerely,


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