



Background on Trump Administration “Faith-Based” Regulations

January 17, 2020

On January 16, the Trump administration announced nine proposed rules that would significantly change the existing regulations that govern the partnerships between the government and faith-based social service providers, such as World Vision, Catholic Charities, and the Salvation Army. The proposed changes would strip away religious freedom protections from people, often vulnerable and marginalized, who use government-funded social services and would expand exemptions that allow faith-based organizations to discriminate against employees working in government-funded programs.

The Departments proposing regulations are [Agriculture](#), [Education](#), [Health and Human Services](#), [Homeland Security](#), Housing and Urban Development (to be published soon), [Justice](#), [Labor](#), [USAID](#), and the [Veterans Administration](#). Comments are due February 18.

The Existing Regulations

The Faith-Based regulations, first adopted by the George W. Bush administration, were designed to strip away key church-state protections that had applied to the partnerships between the government and faith-based organizations for decades. The Bush-era regulations made it easier for faith-based organizations to proselytize those who seek services. For example, they allow taxpayer-funded providers to display religious iconography and scripture in spaces where social services take place. The rules also authorized taxpayer-funded employment discrimination. Under the rules, a provider can take federal dollars and hire only co-religionists.

In 2016, the Obama administration amended the Faith-Based regulations to add important protections for people who use social service programs. The changes were based on [12 unanimous recommendations](#) made by the President’s Advisory Council on Faith-Based and Neighborhood Partnerships. The recommendations were designed to improve social service delivery and strengthen religious freedom. The Council comprised a diverse group and, in its report, said: “As far as we know, this is the first time a governmental entity has convened individuals with serious differences on some church-state issues and asked them to seek common ground in this area.” Council members included the President and CEO of Catholic Charities USA; General Counsel of the United States Conference of Catholic Bishops; and the Vice-President of Evangelization, North American Mission Board and Past President of the Southern Baptist Convention.

The Obama regulations require providers to give beneficiaries written notice of their rights, including that the provider cannot discriminate against beneficiaries based on their religion or force beneficiaries to participate in religious activities. And if a beneficiary objects to the religious character of a provider, the provider must take reasonable steps to find an alternative for the beneficiary. For example, an LGBTQ person might not feel comfortable going to a religious provider if they know the entity professes religious beliefs that reject LGBTQ people and rights, or a Jewish person might feel uncomfortable getting services provided in a church with a crucifix on the wall.

Top Lines

- The proposed regulations are an attack on religious freedom. They will strip away religious freedom protections from people, often vulnerable and marginalized, who use government-funded social services.
- People in need should never be faced with the stark choice between accessing the services they need or retaining their religious freedom protections.
- No one should be forced to choose between conforming to a religious litmus test and losing a government-funded job. The government should never fund discrimination.
- The proposed regulations put the interests of taxpayer-funded entities, some of which receive millions of dollars each year of government money, ahead of the needs of people seeking critical services.
- There is no need to undo the vital religious freedom protections that were implemented just three years ago and that were a result of consensus among leaders on different sides of the issue.

Harmful Changes in the Proposed Rules

The proposed regulations:

- (1) Remove the requirement that providers take reasonable steps to refer beneficiaries to alternative providers if requested.** This change follows Trump's May 2018 [Executive Order](#), which struck the alternative provider requirement provision from the [Obama Executive Order](#).

Top Lines

- The Trump proposed regulations will take away people's access to vital government services. A person who is uncomfortable at a provider could forgo getting the services they need because they are unable to find an alternative provider on their own.
 - A gay homeless teen might not seek services such as housing, food, medical care, or counseling, and lose the opportunity to find a place to live because they know the religion of the faith-based provider condemns them for being gay.
 - A Jewish person might forgo counseling for a mental illness, substance use disorder, or HIV/AIDS because the only program they know of is in a church adorned with Christian iconography.
- The administration falsely claims that helping beneficiaries find an alternative provider is a burden and unfair to faith-based organizations, even though they are receiving tax dollars to perform these services. The purpose of social service programs is to help beneficiaries and their right to receive appropriate and effective service should be paramount.

(2) Strip the requirement that providers give beneficiaries written notice of their religious freedom rights.

Top Lines

- People cannot exercise rights if they aren't aware they have them.
- Stripping this protection shows a lack of respect for beneficiaries and their rights, and puts these rights at risk.
- Refusing to inform beneficiaries of their rights leaves them vulnerable because they don't know they can object to discrimination, proselytization, or religious coercion when getting government-funded services.
- The administration falsely claims that simply giving written notice is a burden on organizations, even though they are being funded to serve the beneficiaries. The purpose of social service programs is to help beneficiaries and their right to receive appropriate and effective service should be paramount.

(3) Expand the existing religious exemption that allows religious organizations to accept grants and discriminate in employment with taxpayer funds. This change is similar to the [recently proposed](#) Department of Labor regulations that apply to Executive Order 11246, which governs federal contractors.

Top Lines

- No one should be forced to choose between conforming to a religious litmus test and losing a government-funded job. The government should never fund discrimination.
- The existing regulations are fundamentally flawed because they already allow religious discrimination in employment.
- Several of the proposed rules extend this exemption even further, making it easier for providers to claim religion as a pretext to discriminate against people on other protected bases. Women and LGBTQ people will face the most harm.

(4) Add special notices to grant announcements and awards to inform faith-based organizations that they can seek additional religious exemptions from federal laws and regulations governing the programs.

Top Lines

- At the same time that the Trump administration is stripping the requirement that providers give beneficiaries written notice of their rights, it is adding a requirement that the government provide written notice to faith-based organizations about their ability to get additional religious exemptions, including under RFRA. This paves the way for providers to refuse to provide key services and opens the door to discrimination in taxpayer-funded programs.
- Government-funded social services should serve everyone. No one should be turned away from getting the help they need because they cannot meet a religious test. Nor

should people be denied services they are entitled to receive in a government program because the taxpayer-funded provider that voluntarily applied for a grant has a religious objection.

- The administration is putting the interests of the institutions they are funding over people in need.

(5) Eliminate the safeguard that ensures people who obtain services through a voucher program (or “indirect aid”) have at least one secular option to choose from.

Top Lines

- No one should be forced to participate in a religious program, attend worship, or pray in order to get vital services. Yet when people who have to use a voucher to get services have no secular option to choose from, this may be their reality.
- The proposed rules redefines “indirect aid” to eliminate the need for the beneficiary to have the option of a secular provider, contrary to what is required by the Constitution.
- Voucher or “indirect aid” programs are governed by different rules than “direct aid” programs. For example, they may include explicitly religious content. In fact, at least one of the proposed regulations says providers can even *require* people to participate in religious programming. As a result, people in need could be left with no choice but to attend a program that includes explicitly religious content and program requirements.
 - The justification for allowing religious content in voucher programs is that the beneficiary of the program, not the government, is making the choice to go to the religious provider. The proposed rules flout this justification because the beneficiary doesn’t have a secular option.
 - The rule ignores the constitutional requirement that voucher programs must offer beneficiaries the opportunity to choose a secular option. Otherwise, beneficiaries are not choosing a religious program, but are instead forced to attend one.

For more information, please contact:

Maggie Garrett, garrett@au.org

Dena Sher, sher@au.org

(202) 466-3234