

August 21, 2019

From: Jonathan Imbody
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To: U.S. Dept. of Labor, Office of Federal Contract Compliance Programs (OFCCP)
RE: RIN 1250-AA09, Docket Number: OFCCP-2019-0003

Proposed rule, "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption"

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On behalf of the 19,000 members of the Christian Medical Association (www.cmda.org) and the 35,000 constituents of Freedom2Care (www.Freedom2Care.org), we applaud the Department's effort to translate into a clear and effective regulation the religious freedoms that are enshrined in our Constitution and in numerous statutes.

Protecting these freedoms not only protects our Constitutional rights; it also advances services to American citizens through partnerships between Government and faith-based organizations.

Religious exercise goes beyond mere freedom to worship

We concur with the Department's intention to define "Religion" so that the term is not limited to religious belief but also includes all aspects of religious observance and practice. We have observed that those who would elevate their own ideology over freedom of religion often do so by attempting to constrict religious freedom to simply freedom of belief or worship.

No one actually needs government protection of the ability to believe or worship.

Belief and worship can be accomplished within the confines of one's own mind and heart, unobservable by government. One can pray without anyone observing the prayer. One can give thanks to God without anyone observing the thanksgiving.

The religious protection that our founders focused on, accordingly, is the freedom to *practice* and carry out what one believes, in accordance with Whom one worships. This accord is often expressed as a conviction of *conscience*—a driving force behind America's settlement by persecuted religious groups and a keystone of the Declaration of Independence and the U.S. Constitution.

Flowing from this definition of religion is the recognition that "religious contractors [may] not only to prefer in employment individuals who share their religion, but also to condition employment on acceptance of or adherence to religious tenets as understood by the employing contractor." If a religious group cannot prefer and hire those who share its beliefs, the group will lose its religious identity.

Religion often motivates followers to perform acts of compassion and sacrifice. Government attempts to neutralize religious influence have the effect of also neutralizing the acts of compassion and sacrifice that flow from religious belief.

Survey evidences need to reassure faith-based nonprofits and strengthen relationships

For this reason, the government does well to not only allow but actively encourage religious organizations to partner with the government in projects while retaining their religious character.

To this end, we encourage the Department to develop and implement innovative educational and outreach programs to reassure religious potential partners of their freedoms and also to diminish the intimidation that federal grant programs often pose to smaller, faith-based organizations.

The Christian Medical Association recently surveyed health professional members working in faith-based organizations (FBOs) overseas, on the topic of strengthening partnerships between the U.S. government and faith-based organizations.¹

The survey, which included responses from individuals working in over 100 faith-based organizations, found that:

1. 60% have never applied for a U.S. government grant.
2. 49% feel that the U.S. government is not inclined to work with FBOs.
3. 84% desire grants technical training. (The most sought training topics include learning about funding opportunities, preparing a proposal and religious issues with government grants.)

Education needed to address bias, encourage partnerships

This strong perception of bias by the federal government against faith-based organizations suggests a need for special outreach by HHS to the faith community to:

- provide reassurance of respect for the faith community's vital contribution to community and national health and social services goals;
- educate the faith community regarding religious freedom protections (as well as boundaries that come with federal grants);

¹ "Strengthening USG-FBO Overseas Health Partnerships" survey, May 2018. To download the full survey report, visit www.freedom2care.org/polling.

- encourage applying for partnerships in grant programs;
- provide technical training in grant applications and grant program management and reporting. This training should include how to access grant opportunities, evaluating and enhancing organizational capacity, creating and submitting a proposal, faith-relevant protections and rules, monitoring and reporting outcomes, building coalitions and working with prime grantees.

A core training module with information applicable to all federal grants could form the foundation for the training resource, with specific modules included for specific grants programs added on to the core module. Existing DOL grants training resources should be reviewed and included in this new resource as appropriate.

The Department should also review, with an eye to replicating successful strategies, two federal programs in the past that have endeavored to attract and train new partners for federal grants programs: the [Compassion Capital Fund](#) for domestic programs, which included Nuts and Bolts technical training seminars, and the [New Partners Initiative](#) that arose out of the President's Emergency Plan for AIDS Relief (PEPFAR).

Polling evidences discrimination and the need for protections

Our surveys of faith-based health professionals, which reveal consistent findings from April 2009 and August 2019, provide hard data that document the point that the faith-based motivation to serve others cannot be separated from the faith-based motivation to serve according to faith tenets.² While this particular survey focuses on faith-based health professionals, its findings can be expected to be replicated among other faith-based professionals.

Key data emerging from our very recent polling data³ is outlined below; further detail is attached and also available at <https://www.freedom2care.org/polling>.

Faith-based health professionals need conscience protections to ensure their continued medical practice

- Over **nine in ten (91%)** faith-based health professionals and students say they "**would rather stop practicing medicine altogether than be forced to violate my conscience.**" This figure has remained *exactly consistent over a decade*; the identical percentage of respondents (91%) agreed with this same statement in our 2009 polling.⁴
- Virtually **all (97%)** say it is necessary to have "**conscience protection** for medical professionals who decline to participate in healthcare procedures, like abortion, assisted

² Survey summaries are available online at <https://www.freedom2care.org/polling>.

³ Faith Based Medical Professionals Survey prepared for Christian Medical & Dental Associations, Interview Dates: July 18 – 29, 2019. Audience: Partner organization members, n=1732. Conducted by Heart and Mind Strategies.

⁴ On behalf of the Christian Medical & Dental Association, the polling company™, inc./ WomanTrend conducted an online survey of members of faith-based organizations. The Catholic Medical Association and Christian Pharmacists Fellowship International also invited their members to participate. The survey was fielded March 31, 2009 to April 3, 2009.

suicide and transgender procedures and prescriptions, to which they object on moral or religious grounds."

Religious health professionals face rampant discrimination

- **Three in five** (60%) faith-based health professionals report that it is **common** "that doctors, medical students or other healthcare professionals **face discrimination** for declining to participate in activities or provide medical procedures to which they have **moral or religious** objections."
- Nearly **one in four** (23%) report having been "**discriminated against** in the workplace or training because of moral or religious beliefs."
- Instances of specific discrimination experienced by survey respondents themselves includes:
 - Nearly **one in three** (32%) have **experienced pressure, coercion or punishment for declining to "participate** in training, perform a procedure, or write a prescription to which you had **moral, ethical, or religious objections**."
 - The drive to force conformity to a particular point of view even involves **ignoring medical and scientific evidence**. Over one in four (26%) experienced pressure, coercion or punishment for declining to "Participate in training, perform a procedure, or write a prescription to which you had *medical or scientific* objections."
 - **One in three** (33%) experienced pressure, coercion or punishment for **declining to "refer a patient for a procedure** to which you had moral, ethical, or religious objections."⁵

Additionally, one in four survey respondents (25%) experienced pressure, coercion or punishment for declining to "refer a patient for a procedure to which you had *medical or scientific* objections."

Access for poor and medically underserved patient populations depends on conscience protections

As polling data of faith-based health professionals attests, deleting or diminishing conscience protections will force faith-based, conscience-guided health professionals to leave medicine.

- **Three in five** (62%) of the health professionals surveyed are "currently involved in **serving poor and medically-underserved populations**, either domestically or overseas."
- Additionally, nearly **three in five** (58%) are "involved in **serving patients on a volunteer or pro-bono basis** in the past 3 years."

⁵ This figure is particularly notable given the fact that the 2008 HHS conscience protection rule was developed in part to respond directly to the threat by The American College of Obstetricians and Gynecologists (ACOG) to marginalize Ob-Gyn doctors who refused to conform to ACOG's edict that all must refer patients for abortions.

- For nearly three in ten (28%) of these professionals, **between half and all of their patients "qualify for low-income healthcare programs** provided by the government."

Faith-based health professionals do not and cannot separate their faith-based motivation to care for the poor and needy from their commitment to practicing medicine according to faith-based ethical principles. Their faith drives both their commitment to serve and their commitment to practice medicine ethically.

That means that if faith-based professionals are forced out of medicine by a lack of the conscience protections that allow them to practice according to ethical norms, the *poor and medically underserved populations served by these professionals stand to suffer a devastating loss of healthcare access.*

Conclusion

1. The Department should pursue a robust application of religious freedom consistent with the Constitution and statutes that protect not only freedom of worship and belief but also freedom of religious *exercise* in accordance with conscience.
2. Polling provides evidence of discrimination and perception of bias against faith-based organizations.
3. Education and reforms are needed to strengthen partnerships between government and faith-based organizations.