

July 6, 2021

Shalanda Young, Deputy Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503
VIA: www.Regulations.gov

Re: Comment on Advancing Equity and Support for Underserved Communities Through Government, Respectfully Submitted by Interfaith Alliance Foundation

Dear Deputy Director Young:

Interfaith Alliance Foundation respectfully offers the following comments in response to the Office of Management and Budget's recent Request for Information entitled "Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government," published in the Federal Register on May 5, 2021, at 86 Fed. Reg. 24029. We welcome President Biden's commitment to advancing equity, made clear via executive order¹ on his first day in office, and look forward to working with OMB and beyond to ensure that all Americans can thrive.

About Interfaith Alliance Foundation

Interfaith Alliance Foundation ("IAF") is a national policy and advocacy organization committed to advancing true religious freedom for all Americans. The only national interfaith organization dedicated to protecting the integrity of both religion and democracy, IAF's membership is made up of individuals rather than institutions, in all 50 states and serving overseas in the U.S. military, and adhering to more than 75 faith traditions and belief systems.

While the notion of religious freedom has been used – and misused – by various groups over the course of our nation's history, IAF's work remains true to the foundational promise of the U.S. Constitution: that every American has the right to believe as we choose, with the secure knowledge that our government will not play favorites or favor religion over non-religion. But we know that for many, this basic right remains an incomplete promise. IAF embraces an inclusive vision of religious freedom that protects historically marginalized groups that have been targets of discrimination in the name of faith including members of religious minorities; Black, Indigenous, and other people of color; LGBTQ+ people; and secular Americans.

One of the most fundamental ways to further our shared goal of advancing equity is by ensuring that government-funded programs serve all who are eligible - without exception - and affirm religious freedom as one of many interconnected rights that we enjoy as Americans. The following comments specifically address the central role that federal agencies, through policy and programs, can play in equitably serving people of all faiths and none and combating the misuse of religion to discriminate. In particular, we submit comments in response to Areas 1, 2, and 4, regarding: public policy strategies that advance equity; approaches for remedying barriers, burden, and inequities in public service delivery and access; and approaches for assessing equity in the administration of agency grant programs.

I. Federal Contractors and Grantees Must Prioritize the Needs of Eligible Beneficiaries

¹ Exec. Order 13985, 86 Fed. Reg. 70009 (Jan. 20, 2021).

The First Amendment protects religious freedom in two essential ways. The Free Exercise Clause guarantees every American the ability to make their own decisions about religion – to affirm, embrace, and practice the religion of their choice or to refrain from participation as a matter of conscience and conviction. At the same time, the Establishment Clause ensures that federal, state, and local governments remain neutral in matters of faith. The government may not favor religion over non-religion or elevate one faith above all others. The commonly used image of a “wall of separation between church and state” illustrates the necessary premise on which our religious freedom depends.

By law, faith-based groups cannot be excluded from federally-funded programs because of their religious nature – this would violate the constitutional prohibition on favoring religion over non-religion or vice versa. But, under requirements set forth under the Obama administration, these groups were generally required to comply with the same operating standards as secular groups and they could not subject program beneficiaries to mandatory religious activities.

But to our great disappointment, and despite strong opposition from a wide range of organizations, the Trump administration stripped many these religious freedom protections from applicable regulations and made other changes that undermine beneficiaries’ rights. These regulations eliminate notice and alternative provider requirements, expand religious exemptions for providers, and redefine “indirect aid.” The Trump administration put the interests of taxpayer-funded entities, some of which receive millions of dollars each year of government money, ahead of the needs of our friends and neighbors seeking critical social services. These new rules make it harder for people to get the services they need and undermine the effectiveness of government-funded programs.

Agencies that receive at least some public funding – through federal, state, or local government contracts – should be required to serve all members of the public that meet their program requirements. Faith-based organizations, like secular organizations, should not be allowed to take government funds and then place religious litmus tests on whom they hire, whom they serve, or what services required under the program to provide.

A. Contractors and Grantees Must Serve All Who Are Eligible - Without Exception

Government-funded programs exist to benefit the individual recipients of services, not to benefit contractors or grantees. The needs of the beneficiaries should be the agencies’ primary focus. With a handful of exceptions, hundreds of faith-based agencies comply with these requirements every day and play an integral role in communities across the country. From connecting new parents with nutritional supports to providing services for the elderly, faith-based organizations often step in to fill the gap for people in need. And many do so not because the law requires it, but because their faith guides them to.

But others continue to pursue opt-outs from generally applicable requirements, leaving potential beneficiaries with the stark choice between accessing the services they need or remaining true to who they are and what they believe. To deliver on the Biden administration’s commitment to equity, agencies should not create exemptions allowing taxpayer-funded organizations to refuse to serve eligible beneficiaries or provide services otherwise required under their grants or contracts.²

² See *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985) (stating, “The First Amendment. . . gives no one the right to insist that in pursuit of their own interest others must conform their conduct to his own religious necessities.”); *United States v. Lee*, 455 U.S. 252 (1982) (“When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity. Granting an exemption from social security taxes to an employer operates to impose the employer’s religious faith on the employees.”); see e.g. *Cutter v. Wilkinson*, 544 U.S. 709, 720, 722 (2005) (to comply with the Establishment Clause, courts “must take adequate account of the burdens a requested accommodation may impose on

Simply put, people of all faiths and identities suffer when a contractor or grantee receives an exemption permitting discrimination against potential or actual beneficiaries because of who the individual is, who they love, or how they worship. But members of marginalized communities, particularly those with multiple marginalized identities, experience this discrimination more acutely.³ For instance, in the healthcare context, LGBTQ+ people frequently face barriers including refusal from medical treatment, lack of protection from gender identity discrimination, and challenges in obtaining health insurance coverage.⁴

One survey found that a quarter of transgender individuals reported being subject to harassment in medical settings.⁵ In fact, “the data show that health care providers most often discriminate against transgender people *simply for being who they are* –not based on the care they need.”⁶ In another recent study, nearly one in five LGBTQ people, including thirty-one percent of transgender people, said that it would be very difficult or impossible to get the healthcare they need at another hospital if they were turned away.⁷ That rate was substantially higher for LGBTQ people living in non-metropolitan areas, with forty-one percent reporting that it would be very difficult or impossible to find an alternative provider.⁸

In these scenarios, and many others, denial of care by a contractor or grantee can impact a beneficiary’s financial, physical, and overall wellbeing while acting as a deterrent against seeking services in the future. By establishing objective standard that contractors and beneficiaries must meet, federal agencies can ensure that taxpayer funds are being used to serve those in need without exception. If an applicant is unable, for any reason, to fulfill the program’s requirements to an extent that program beneficiaries would be harmed, an agency should rightly decide against awarding the applicant a contract or grant. This should never be considered *discrimination* against the deficient applicant.⁹

B. Contractors and Grantees Must Provide All Services They Are Funded to Offer

Agencies should also require all contractors and grant recipients to provide all services that are incorporated within the funding program, without exception. If funding recipients are permitted to refuse to provide particular services that they are otherwise equipped to provide, intended beneficiaries may never be aware that they are entitled to such services or know to seek them out. Investigating alternative providers on their own could mean missing work, finding and paying for child care, paying for transportation, and visiting various other organizations to find alternative options – only to risk being turned away again. This would

nonbeneficiaries” and must ensure that the accommodation is “measured so that it does not override other significant interests”) (citing *Estate of Thornton v. Caldor*, 472 U.S. 703, 710 (1985)); see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring).

³ For documented instances where religious health care providers denied care to patients on the basis of religious beliefs, see Compl. 2, *ACLU of Mich. v. Trinity Health Corp.*, 2016 U.S. Dist. LEXIS 30690 (E.D. Mich. Mar. 10, 2016); Freedman et al., *When There’s a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals*, 98 AM. J. PUBLIC HEALTH 1774 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2636458/>; National Women’s Law Center, *Refusals to Provide Health Care Threaten the Health and Lives of Patients Nationwide*, <https://nwlc.org/resources/refusals-to-provide-health-care-threaten-the-health-and-lives-of-patients-nationwide/> (last visited Oct. 20, 2017).

⁴ Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. at 31,460 (codified at 45 C.F.R. pt 92).

⁵ *Id.*

⁶ Sharita Gruberg & Frank J. Bewkes, CENTER FOR AMERICAN PROGRESS, “The ACA’s LGBTQ Nondiscrimination Regulations Prove Crucial” (Mar. 7, 2018),

<https://cdn.americanprogress.org/content/uploads/2018/03/06122027/ACAnondiscrimination-brief2.pdf> (emphasis added).

⁷ Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, 2016, <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care>.

⁸ *Id.*

⁹ The Supreme Court’s recent decision in *Fulton v. City of Philadelphia* was a narrow one, focusing exclusively on the contracting process in place in the city at the time that Catholic Social Services’ contract was not renewed. 593 U.S. ____ (2021). As in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the court did not create a generally applicable rule requiring religious exemptions to nondiscrimination requirements. 584 U.S. ____ (2018).

be extremely taxing for the very people who should be supported by these organizations, and who may already have limited resources.

Contractors' and grantees' ability to offer all services should be a requirement to apply for funding, a basis for evaluating them against other funding applicants, and a metric that is reviewed by the agency after funding is approved. In more complex programs where a grantee applies for funding with a group of subgrantees, it may be feasible to allow each individual funding recipient to either provide all services or offer an effective referral to another funding recipient within the grant network that would be accessible to the beneficiary. An applicant for funding that would include funding recipients that do not offer all required services and would not offer referrals to other sources of those services within the grant network should not receive funding. In these very limited circumstances, it remains paramount that beneficiaries have access to meaningful alternatives.

II. Education Policies and Programs Must Abide by the Separation of Religion and Government, Ensuring All Students Can Thrive

Ensuring every child receives a quality education is top priority in communities across. Yet budgets are stretched thin even as students, teachers, and staff navigate a return to the post-pandemic classroom. To provide equitable educational opportunities for all students, we urge the use of public funding for public education rather than private school voucher programs or similar programs that divert public funds to private education.

While public schools serve students of all backgrounds and experiences, private schools are not held to the same standard. Many of the rights and protections guaranteed to students in public schools are not available to students using vouchers to attend private schools. Private schools often deny admission to, discipline, or expel students based on sexual orientation, disability, learning needs, and other bases upon which public schools are not allowed to discriminate.

As the overwhelming majority of private schools are religious, students of minority faith traditions and LGBTQ+ students are particularly susceptible to discrimination in voucher programs. While it is unlawful for public schools to refuse admission on the basis of religion, private religious schools may deny admission to students who come from a faith background that is different from the affiliation of the school or require students to adhere to the religious tenets of the school they are attending. LGBTQ+ students are also harmed by voucher programs, as private religious schools that receive vouchers may deny admission to LGBTQ+ students and students with LGBTQ+ parents.

The key to providing equitable educational opportunities for all students is investment in the nation's public schools. Private school voucher programs threaten vital funding for public schools and demonstrably decrease equity for historically underserved communities. To better serve students now and for the future, our government must invest in strong public schools and not private alternatives.

III. Hate Crime Response and Prevention Must Begin by Engaging Directly Impacted Communities

Any crime committed by one person against another is a tragedy but hate crimes are uniquely damaging, impacting those targeted, their loved ones, and the larger group they represent. The FBI's 2019 annual hate crime report saw a record high for reported hate crime murders in the United States.¹⁰ These types of crimes are significantly more likely to target Black and Brown communities, though hate crimes and harassment

¹⁰ U.S. Dept. of Justice, Federal Bureau of Investigation, *2019 Crime in the United States*, (last visited July 6, 2021, 4:50pm) <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019>.

against Americans of Asian descent and origin surged in 2020 and have continued into 2021.¹¹ Hate-based violence also targets religious minorities, including Jewish, Muslim, and Sikh communities, with 2019 seeing a surge in anti-Semitic incidents.¹² This violence takes a physical and emotional toll on affected communities and is a threat to Americans' security.

An equitable response can only take place through partnership with directly impacted communities. For many members of historically underserved populations, law enforcement may not signify a source of protection or support. As a result, familiar and trusted community organizations play a critical role in addressing the needs of survivors and securing justice. We urge federal agencies to, wherever possible, work together with and center these networks of deep knowledge and trust in all efforts to respond to hate-based violence.

IV. Federal Land Management Must Honor Native American Religious Freedom Claims and Respect Sacred Land

Longstanding U.S. laws and policies have not recognized and respected Native Americans' religious freedom, often instead prioritizing development and corporate interests. This dynamic proved particularly damaging under the Trump administration, causing irreparable harm to the physical integrity of indispensable and irreplaceable sacred sites. In advancing equity for Native Americans, particularly in the area of religious freedom, agencies must recognize the historic injustices that drive the management of sacred lands and embrace a vision of land conservation that prioritizes Native perspectives and religious practices.

President Biden recently signaled a new approach to the management and preservation of sacred lands in executive orders to conserve public lands¹³ and tackle the climate crisis.¹⁴ While we are encouraged by the inclusion of Tribal authorities in setting agency policy, we ask that the agencies follow these commitments with substantive action. In addressing these and other issues surrounding Native religious freedom, agencies must work closely with Tribal leadership to develop equitable policies and programs. It is our hope that genuine engagement of Tribal stakeholders will allow for co-management of sacred lands in a way that protects the religious practices of Native Americans without undue constraints by outside actors.

V. Conclusion

Interfaith Alliance Foundation looks forward to partnering with President Biden and the agencies to advance equity and ensure that all Americans can thrive. We would welcome the opportunity to delve more deeply into these and other issues related to true religious freedom and combating the misuse of religion to discriminate. Please free to contact Katy Joseph, Director of Policy & Advocacy, at kjoseph@interfaithalliance.org.

¹¹ Kimmy Yam, *Anti-Asian hate crimes increased by nearly 150% in 2020, mostly in N.Y. and L.A., new report says*, NBC NEWS (March 9, 2021), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264>.

¹² *Supra*, n. 15.

¹³ Exec. Order No. 14008, 86 Fed. Reg. 19 (Feb. 1, 2021).

¹⁴ Exec. Order No. 13990, 86 Fed. Reg. 14 (Jan. 25, 2021).