February 12, 2020

Emily Tasman, Attorney-Advisor
USDA, Office of the General Counsel,

Re: Equal Opportunity for Religious Organizations in U.S. Department of Agriculture Programs. RIN 0510-AA08

Dear Ms. Tasman:

On behalf of MAZON: A Jewish Response to Hunger, I am writing in response to the United States Department of Agriculture’s (USDA) request for comments regarding its proposed amendments to USDA regulations to implement Executive Order 13831, on the Establishment of a White House Faith and Opportunity Initiative.

MAZON vehemently opposes the proposed rule change, which will officially license the discrimination against some of our nation’s most vulnerable citizens. The proposed revisions are an affront to our national values, contrary to our laws, arbitrarily timed, and would cause needless irreparable harm. Indeed, they are actually an affront to the values of many religious traditions, including Judaism, and to the extensive communities of religious minorities throughout the country who embrace these values. As such, this proposal must be withdrawn.

Inspired by Jewish values and ideals, MAZON is a national advocacy organization working to end hunger among people of all faiths and backgrounds in the United States and Israel. For nearly 35 years, MAZON has been committed to ensuring that vulnerable people have access to the resources they need to be able to put food on the table. MAZON is a leading voice on anti-hunger issues, especially those that involve low-income populations or problems that have been previously overlooked or ignored—this includes food insecurity among currently-serving military families, veterans, single mothers, seniors, rural communities, Tribal Nations, and college students. It is with this experience and focus that we address USDA’s request for comments.

As an organization founded upon and grounded in Jewish values and experiences, we must oppose any government action that allows and encourages discrimination against a marginalized group, particularly on religious grounds. We are concerned that USDA’s proposal would erase protections that currently prohibit government-funded programs from discriminating against people they serve.
Allowing organizations to discriminate on religious grounds is anathema to our values as a Jewish organization and as citizens of the United States of America. As a minority religion in the United States, Jewish Americans can recall all too recent business and organizational practices of religious discrimination against Jews in this country. In our lifetimes, we saw hotels, restaurants, retail, and social service establishments with prominent signs that declared: “No dogs or Jews allowed.” We know that exclusionary ideologies are dangerous in any form, and this proposal certainly promotes an exclusionary ideology.

In addition to being contrary to Jewish values, this proposal is an affront to American ideals—a government by and for the people, three co-equal branches of government, and a separation between church and state. By limiting the comment period to 30 days, instead of the 60-day period required by law, USDA risks that this binding and consequential proposal will be inadequately vetted by the public. In addition to dismissing the important role the public plays in the rulemaking process, the shortened timeline for comments on this proposed change are contrary to the clear Congressional intent behind the Administrative Procedure Act (APA).

Knowing that this rule touches upon hotly debated issues regarding religious freedom and discrimination against already marginalized groups, it is deeply troubling that USDA does not consider this agency action an official rulemaking bound by the APA. Under the APA, even when amending or repealing an existing rule, an agency must proceed with the same notice-and-comment rulemaking procedures that governed the original promulgation of the rule. The comment period here is only half as long as the APA mandated period, with no compelling or even cogent reason given.

For the communities that would be negatively affected by this proposal, the procedural irregularities are dwarfed by the grave harm that these proposed changes would inflict upon people who are already struggling. MAZON’s decades of advocacy on behalf of vulnerable populations grants us the expertise to know that many groups already face unique barriers to accessing supports to help them meet their basic human needs, food principal among them, and would be adversely affected by this rule change proposal.

The stigma and shame faced by vulnerable people seeking help to meet their basic human needs is already a significant barrier to receiving assistance. Allowing faith-based service providers that receive taxpayer funding to shirk their responsibility to accommodate the populations they serve raises this barrier even higher. Freedom of religion is one of our nation’s founding principles, and as such, no one should be subjected to the religious teachings or practices of a faith tradition they do not follow in order to obtain government funded assistance. To be required to hear a sermon before receiving a hot meal, or to experience

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1 U.S. Department of Agriculture


judgment due to not conforming to religious beliefs promoted by a service provider in exchange for lifesaving nutrition is unconscionable in America.

The meal programs provided by USDA are essential tools on the front lines of the fight to end hunger in America. These proposed changes will erode the benefits provided by these longstanding public services, and the harm will be felt most harshly by those who are already marginalized. By removing the requirements that providers give beneficiaries written notice of their religious freedom rights and take reasonable steps to refer beneficiaries to alternative providers if requested, this proposal shifts relatively low administrative costs off of providers and replaces it with an intolerable burden on struggling individual beneficiaries. According to USDA’s Notice of Proposed Rulemaking, “[s]pecific information is not available on [the] costs to roughly 3,500 estimated beneficiaries who seek services but then object to the religious character of the provider, thus requiring them to seek other service providers under the proposal where referrals had previously been made by the provider. [USDA assumes] for the purposes of this analysis that up 2 hours may be needed for each beneficiary to find alternative services. Valuing that time at the Federal minimum wage rate ($7.25 per hour), we estimate that this reflects roughly $50,000 in total annual cost for beneficiary time.”3

USDA “invites comment on any information that it could use to better quantify these cost increases,”4 but has limited the comment period with no justification, preventing a full analysis of the true costs of this proposal. The existing estimation is an imprecise and insulting dismissal of the religious freedom of vulnerable Americans. How did USDA arrive at its startlingly low estimate of beneficiaries who seek services but then object to the religious “character of the provider?” Apart from failing to provide any concrete verifiable data, we must also note that suggesting it is the religious character of the provider to which beneficiaries object is to misconstrue and sanitize the true objections: forcing religious teachings on those who do not embrace those beliefs. The incomplete cost-benefit analysis performed by USDA is then used to justify forcing hungry people to choose between their First Amendment rights and receiving the nutrition that will keep them alive. In far too many circumstances, hungry individuals or families would be faced with the Hobson’s Choice of receiving food to satiate that hunger or leaving in search of other options, while that hunger grows more and more unbearable.

Populations that already face heightened barriers to accessing the food they need would be particularly affected by these proposed changes. The people who will likely face the most harm are school children, women, seniors, the LGBTQ community, and those living in rural areas. Nutrition programs aimed at feeding children, particularly summer meals, are often administered through religious institutions, most commonly churches. It is absolutely devastating to think of a hungry child facing bullying and discrimination for having different religious beliefs or cultural practices than those of the institution providing them life-sustaining

meals. Adding insult to injury, this proposal alleviates taxpayer funded institutions of their burden to do anything to prevent such trauma.

The Emergency Food Assistance Program (TEFAP) is designed to be a lifeline for people struggling with hunger. Placing barriers to receiving adequate nutrition from TEFAP on hungry families, as this proposal does, is contrary to the stated purpose of the program. Like many feeding programs, TEFAP food and funds are often distributed to soup kitchens and food pantries housed in religious institutions. For a single mother in need of food for herself and her children, a church may be a place where she has faced scorn for having a child as an unmarried woman. Without being informed of her rights or provided alternative options, she would be forced to choose between subjecting herself to harsh judgment for her circumstances or going hungry.

Stripping religious freedom protections from USDA programs designed to help seniors in need, like the Commodity Supplemental Food Program (CSFP), is especially galling as research has shown that seniors experience higher rates of food insecurity.\(^5\) According to the National Foundation to End Senior Hunger, nearly one in every six seniors in America faces the threat of hunger and not being properly nourished.\(^6\)

Removing safeguards against discrimination in USDA food programs will have a particularly devastating effect on the LGBT community, which already faces high rates of both food insecurity and discrimination. According to the Williams Institute at the UCLA School of Law, “more than 1 in 4 LGBT adults (27%)—approximately 2.2 million people—experienced a time in the last year when they did not have enough money for the food that they or their families needed, compared to 17% of non-LGBT adults.”\(^7\) The barriers faced by individuals at the intersection of the LGBT and senior communities are uniquely high, and LGBT seniors rely heavily on the programs that would be affected by this proposed rule change. By allowing these programs to discriminate on religious grounds while receiving federal funds and resources, this proposed change would make receiving vital nutrition assistance more difficult for the people who need it most.

In rural and remote areas, these harms will be exacerbated, as alternate providers may be harder to locate, more difficult to access, or in some cases non-existent. These proposed changes not only make a difficult process even harder for those who are already struggling; they also send a message that the religious freedom of the institutions providing assistance is

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7. Food Insecurity and SNAP Participation in the LGBT Community, The Williams Institute at the UCLA School of Law (July 2016) [https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/](https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/)
more important than the same freedom for the individuals in need. Furthermore, these changes were proposed without proper consultation with Tribal Nations, violating tribal sovereignty, treaties, and the U.S. Constitution. As Native American communities are already disproportionately affected by food insecurity and have endured a long and tragic history of discrimination, persecution, and acculturation and conversion at the hands of religious institutions, it is likely that these communities who are served by non-Native faith-based organizations would face discrimination.

When discrimination of any group is allowed, discrimination of others is sure to follow. As this rule condones and facilitates discrimination, we know that it will create a chilling effect, making people wary of seeking out the help they need for fear of mistreatment. This rule change proposal would increase the hardship for the very people the rule is meant to assist. As such, it is contrary to the purpose of the Department of Agriculture to enhance and protect the health and well-being of all Americans and should be withdrawn.

Sincerely,

Abby J. Leibman
President and CEO
MAZON: A Jewish Response to Hunger