February 18, 2020

U.S. Department of Health and Human Services
Center for Faith and Opportunity Initiatives (Partnership Center)


Dear Assistant Secretary:

On behalf of MAZON: A Jewish Response to Hunger, I am writing in response to the Department of Health and Human Services’ (HHS) request for comments regarding its proposed amendments to HHS general 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 As such, this proposal must be withdrawn.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 HHS’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 HHS’ 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, HHS 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 HHS 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

1 U.S. Department of Health and Human Services
Center for Faith and Opportunity Initiatives (Partnership Center)
2 A Brief Overview of Rulemaking and Judicial Review, Congressional Research Service (Mar. 27, 2017)
https://fas.org/sgp/crs/misc/R41546.pdf
assistance. To be required to hear a sermon before receiving a hot meal, or to experience judgment due to not conforming to religious beliefs promoted by a service provider in exchange for lifesaving nutrition is unconscionable in America.

The Congregate and Home-Delivered Nutrition Programs provided by HHS are an essential tool to fight 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 a de minimis administrative requirement off of providers and replaces it with an intolerable burden on struggling individual beneficiaries. In addition to being an inefficient allocation of resources – under existing regulations, providers need only keep a list of alternate options to distribute to all beneficiaries, whereas the proposed rule would require each beneficiary to spend valuable time researching alternate options for themselves – this change privileges organizations funded by HHS over the beneficiaries HHS was created to serve.

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 women, the LGBTQ community, seniors, and those living in rural areas. Congregate feeding programs are often provided by or housed in religious institutions, most commonly churches. 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.

Research has shown that the LGBT and senior communities experience higher rates of food insecurity.³ 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.⁴ The barriers faced by individuals at the intersection of these communities are uniquely high, and LGBT seniors rely heavily on the programs that would be affected by this proposed rule change, particularly congregate feeding programs and emergency food pantries that are often run by religious institutions.

houses of worship. 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 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 Health and Human Services 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