



# AMERICAN ATHEISTS

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March 13, 2023

Peter Mina  
Senior Official Performing the Duties of the Officer for Civil Rights and Civil Liberties  
Office for Civil Rights and Civil Liberties  
U.S. Dept. of Homeland Security  
2707 Martin Luther King Jr. Ave SE  
Washington, D.C. 20528

**Re: Partnerships With Faith-Based and Neighborhood Organizations (RIN: 0412-AB10; 0510-AA00; 0991-AC13; 1105-AB64; 1290-AA45; 1601-AB02; 1840-AD46; 2501-AD91; 2900-AR23, Docket No. 5563-2022, Doc. No. 2022-28376)**

Dear Mr. Mina:

American Atheists writes in response to the notice of proposed rulemaking by the Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, and Department of Health and Human Services titled: “Partnerships With Faith-Based and Neighborhood Organizations.”<sup>1</sup> The Proposed Rule is meant to clarify protections for beneficiaries and potential beneficiaries receiving federally funded social services and the rights and obligations of organizations providing such services. We submit comments pertaining to the interests of nonreligious people and religious minorities, who were poorly served by the changes to these protections under the Trump Administration. We support these new regulations that reinstate religious equality and church-state separation protections for federally funded social services and provide herein suggestions for various amendments to strengthen the final rule.

American Atheists is a national civil rights organization that strives to achieve religious equality for Americans by protecting what Thomas Jefferson called the “wall of separation” between the government and religion created by the First Amendment. We work to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious equality, American Atheists believes that government programs should be inclusive and accessible to people regardless of their religious beliefs or lack thereof.

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<sup>1</sup> Partnerships with Faith-Based and Neighborhood Partnerships, 88 Fed. Reg. 2395 (Jan. 13, 2023), RIN: 0412-AB10; 0510-AA00; 0991-AC13; 1105-AB64; 1290-AA45; 1601-AB02; 1840-AD46; 2501-AD91; 2900-AR23, Docket No. 5563-2022, Doc. No. 2022-28376, available at <https://www.federalregister.gov/documents/2023/01/13/2022-28376/partnerships-with-faith-based-and-neighborhood-organizations> [hereinafter, “Proposed Rule”].

Rules regarding partnerships with faith-based organizations were originally created by George W. Bush's Administration after the issuance of Executive Order 13279.<sup>2</sup> In 2016, the Obama Administration added important beneficiary protections through Executive Order 13559<sup>3</sup> and rulemaking from agencies followed.<sup>4</sup> However, the Trump Administration issued Executive Order 13831<sup>5</sup> and stripped these important protections from the regulations in 2020.<sup>6</sup> The Proposed Rule seeks to restore these important protections for beneficiaries and to ensure that the government's First Amendment obligations are met.

**The Trump Rule harmed religious minority and nonreligious beneficiaries of federally funded social services programs, and the Proposed Rule will restore these critical protections.**

Nonreligious people are an invisible minority in the United States, having sadly faced a long history of opprobrium and stigmatization. Although the percentage of Americans who consider themselves religious has been declining for decades, and the diversity of religious beliefs has increased substantially in that time, nonreligious Americans continue to live in a culture dominated by religious supremacy. Like other religious minorities, nonreligious people too often face discrimination in various areas of life, as well as stigmatization, because of their beliefs.

In Spring 2021, a Colorado man was involuntarily committed to a substance use disorder in-patient treatment facility, New Beginnings Recovery Center (NBRC), at the direction of the Colorado Office of Behavioral Health (OBH), which receives grant funding from the U.S. Department of Health and Human Services (HHS). NBRC's program consisted of complete confinement and supervision as well as required Bible study and church attendance. In April 2021, he explicitly pointed out to his case managers that he was being subjected to a court mandated religious program and made repeated requests to attend an alternative secular program. These requests were ignored by OBH case managers.

In May 2021, he was transitioned to the intermediate program at NBRC, which allowed him to travel freely during much of the day but required him to live at Mary's Hope Sober Homes, for which he paid a

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<sup>2</sup> Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 Fed. Reg. 77139 (Dec. 16, 2002), available at <https://www.federalregister.gov/documents/2002/12/16/02-31831/equal-protection-of-the-laws-for-faith-based-and-community-organizations>.

<sup>3</sup> Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, 75 Fed. Reg. 71317 (Nov. 22, 2010), available at <https://www.federalregister.gov/documents/2010/11/22/2010-29579/fundamental-principles-and-policymaking-criteria-for-partnerships-with-faith-based-and-other>.

<sup>4</sup> Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, 81 Fed. Reg. 19353 (May 4, 2016), available at <https://www.federalregister.gov/documents/2016/04/04/2016-07339/federal-agency-final-regulations-implementing-executive-order-13559-fundamental-principles-and> [hereinafter, "Obama Rule" or "2016 Rule"].

<sup>5</sup> Executive Order 13831, Establishment of a White House Faith and Opportunity Initiative, 83 Fed. Reg. 20715 (May 8, 2018), available at <https://www.federalregister.gov/documents/2018/05/08/2018-09895/establishment-of-a-white-house-faith-and-opportunity-initiative>.

<sup>6</sup> Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82,037 (Dec. 17, 2020), available at <https://www.federalregister.gov/documents/2020/12/17/2020-27084/equal-participation-of-faith-based-organizations-in-the-federal-agencies-programs-and-activities> [hereinafter, "Trump Rule" or "2020 Rule"].

monthly rent. This program required mandatory church attendance every Sunday morning, as well as meetings at Sober Underground, a 12-step program that is held in the same space as church services. Throughout this program, NBRC emphasized repeatedly that an atheist could never hope to overcome substance use and addiction. On May 26, American Atheists requested that OBH take steps to ensure this client had access to a secular option.

In June, he discussed the option of living outside the sober home with director of NBRC, and although he was given permission to leave, it came with a heavy price. The director berated him for his atheism and for contacting OBH about his grievances instead of going to her first, she punished him for doing so by requiring he attend more religious meetings, and she again told him he could never maintain sobriety due to his atheism. Instead of helping to resolve this situation, OBH placed the burden on him to find a suitable alternative substance abuse program.

In June 2021, American Atheists filed two complaints with the HHS Office for Civil Rights (HHS OCR) related to this case,<sup>7</sup> which received a response on February 27, 2023. The response to both complaints stated, in pertinent part:

Upon review of your complaint, we have determined that OCR's Conscience and Religious Freedom Division (CRFD) does not have authority to investigate the religion or conscience claims of your complaint and, therefore, is closing the above-referenced matter.

This case clearly illustrates the shortcomings of the current enforcement procedures in the 2020 Rule pertaining to federally funded social services. Although this client suffered as a result of the violation of program rules and faced both religious discrimination and coercion, HHS OCR failed to address, or even investigate, the issue because of a lack of clear authority. Instead of focusing on clear violations of the rule that harm beneficiaries, the 2020 Rule exists only to protect religious providers and insulate them for repercussions for their violations.

Under the Proposed Rule all organizations providing social services under Agencies' direct Federal financial assistance programs must give written notice to beneficiaries and prospective beneficiaries of certain protections. Resuming this notice requirement is a positive change that will inform beneficiaries of their rights and better protect them from religious coercion and discrimination. No one should be required to submit to religious proselytization or be forced to participate in prayer or religious worship just to access benefits from taxpayer-funded social services. Accordingly, the new regulations require all providers—both secular and faith-based—to give beneficiaries effective notice of their right to religious freedom and associated protections in funded programs. Beneficiaries cannot exercise their rights if they aren't aware they have them or don't understand them. And because people using government-funded social services should not be expected to be experts in the Constitution or their right to religious freedom, written notice, in plain language, is essential.

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<sup>7</sup> DO-21-453070: Civil Rights & Conscience and Religious Freedom Discrimination Complaint against New Beginnings Recovery Center; DO-21-430481: Civil Rights & Conscience and Religious Freedom Discrimination Complaint against the Office of Behavioral Health of the Colorado Department of Human Services.

However, as this example illustrates, merely providing notice of rights is not enough. It is *essential* that each Agency establish a process for taking and dealing with complaint for violations of these Proposed Rules and delegate authority as needed to execute that authority (see below). When it comes to safeguarding beneficiaries’ constitutional rights, no less will do.

Additionally, the Proposed Rule requires the Agencies, when appropriate and feasible, or State agencies and other entities that might be administering a federally funded social service program, to provide notice to beneficiaries or prospective beneficiaries about how to obtain information about suitable alternative federally funded service providers. Compared to the 2020 Rule, we believe that this is a positive change that will better inform beneficiaries who need secular alternatives. However, in order for beneficiaries to actually be able to use the modified process, they need information that is easy to access and easy to use. Agencies must ensure this information is available and usable for beneficiaries. One mechanism to do so may be to require that the notice requirements also include information about how to access information about alternate providers. Also, Agencies should take steps to ensure that beneficiaries are informed about how to access alternative providers if they file a complaint about violations of these rules. Millions of Americans may object to being required to receive social services from religious providers, and therefore, beneficiaries may forgo getting the services they need because they don’t know they have a right to an alternative provider and may not know how to find one.

**It is critical that each Agency adopt enforcement procedures to protect beneficiaries and ensure compliance with these rules.**

The Proposed Rule, like the Trump Rule, the Obama Rule before it, and the Executive Order issued by President George W. Bush that first established these rules, require that grantees and subgrantees may not “discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.”<sup>8</sup> However, this proscription is meaningless if agencies have no mechanisms to verify compliance and beneficiaries participating in these programs have no ability to enforce their rights and seek remedy when they encounter violations. Therefore, it is crucial that each Agency specifically designate a unified mechanism for receiving complaints for violations of the Proposed Rule and procedures for enforcement.

The 2016 Rule acknowledged that agencies must “vigorously monitor and enforce” the regulations.<sup>9</sup> Other than the Department of Justice (DOJ),<sup>10</sup> however, none of the Agencies adopted regulatory language to define the complaint and enforcement procedure. As a result, beneficiaries have been left without recourse when violations occurred.

We recommend that, like DOJ, Agencies designate and delegate authority to the Office for Civil Rights, or its equivalent, to accept and record complaints and to investigate, enforce, and report on these complaints. We understand that there are differences among Agencies, but implementing uniform policies like DOJ’s would be the soundest and most transparent way to ensure fidelity to constitutional principles and programmatic goals, and ultimately, to serve beneficiaries in the most effective and equitable way.

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<sup>8</sup> Proposed Rule at 2415.

<sup>9</sup> 2016 Rule at 19370.

<sup>10</sup> 28 C.F.R. § 38.8.

Offices for Civil Rights have expertise and responsibility for investigating claims of discrimination under the Federal civil rights statutes. These offices already have procedures for taking complaints of this nature, investigating them, collecting data, and recordkeeping, so they are best equipped to deal with complaints filed pursuant to these regulations.<sup>11</sup> In addition, like DOJ, Agencies should specify enforcement mechanisms to address violations found during an investigation.

This type of centralized intake for complaints, accompanied by notice to beneficiaries that provides sufficient information to file a complaint, would greatly clarify the complaint process for beneficiaries. Furthermore, such centralized procedures would allow for better tracking of complaints, investigation, and resolution. This, in turn, would allow the Agencies to better: (1) identify gaps in social services programs; (2) identify and investigate where discrimination or violations are taking place; and (3) assess the performance of providers for the purpose of grantee training, evaluation, and grant renewal.

Although the current DOJ enforcement provisions allow complaints to also be filed with “the intermediary that awarded funds to the organization,”<sup>12</sup> we do not recommend this as a model because it is confusing, unnecessary, and likely to result in disparate treatment of complaints. Offices for Civil Rights, or their equivalent, are best suited to take complaints and investigate them in a uniform manner, and therefore all complaints should be filed through such offices. Allowing complaints to be filed among the various levels of grantees and subgrantees of Federally funded social services programs would result in scattered and inconsistent processes and prevent Agencies from analyzing the complaints and taking appropriate action to remedy violations. Finally, centralizing the process of receiving and investigating complaints will reduce potential burden on grantees and intermediaries.

Establishing a process for receiving and investigating complaints of the rules directly follows from each Agency’s housekeeping authority, which allows Agencies to administer the terms and conditions of their grant programs.<sup>13</sup> Under this rulemaking authority, each Agency may promulgate regulations governing programs administered by the Agency and to manage the internal operations and functions of the Agency.<sup>14</sup> Agencies’ rulemaking authority should be read in concert with their duties under the U.S. Constitution and with the Executive Orders that are the bases of these rules.

**The Proposed Rule clarifies constitutional prerequisites for indirect aid based on a faithful interpretation of the *Zelman* decision.**

American Atheists supports the removal of language added by the 2020 Rule stating that providers that receive indirect aid (such as vouchers) “may require attendance at all activities that are fundamental to the

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<sup>11</sup> We note that most agencies’ Offices of Civil Rights already have forms for taking complaints that have already been approved through Paperwork Reduction Act review. *See, e.g.*, Dept. of Health and Human Services, Office for Civil Rights, Complaint Forms for Civil Rights and Conscience; Health Information Privacy and Security Complaints, OMB Control No. 0945-0002. ICR Ref. No. 202209-0945-001. These complaint forms could readily be adapted to collect complaints concerning violations of the Proposed Rule.

<sup>12</sup> 28 CFR § 38.8(d).

<sup>13</sup> *See, e.g.*, 5 U.S.C. § 301 (general authority); 20 U.S.C § 1221e-3 and § 3474 (Dep’t of Educ.).

<sup>14</sup> *Chrysler Corporation v. Brown*, 441 U.S. 281 (1979).

program,”<sup>15</sup> including requirements concerning religious activities and worship. The Constitution prohibits Agencies from using direct aid to support or pay for providers’ explicitly religious activities.<sup>16</sup> However, providers that receive funding through indirect aid are permitted to include explicitly religious activities in their programs, so long as beneficiaries using the vouchers make a “genuine and independent private choice” to participate.<sup>17</sup> Requiring beneficiaries to attend religious services in order to receive benefits is clearly improper religious coercion; they must have genuine options for this to be a truly independent decision. Defining “indirect aid” properly, therefore, is critically important to ensure beneficiaries’ rights are protected. We support the Agencies’ Proposed Rule that aligns with *Zelman* by stating that a service provider must receive the assistance “wholly as a result of” a “genuine and independent private choice” of the beneficiary, not a choice of the Government. Moreover, we support the proposed language added to the second part of the definition of “indirect Federal financial assistance,” which clarifies that the availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.<sup>18</sup>

Without the requirement for a secular alternative, beneficiaries can be forced to receive essential benefits from religious providers that engage in religious coercion, condition their services on participation in religious activities such as worship, or limit access to services based on religion. In this scenario, the government would, in effect, be adding a religious requirement to government services. Instead, the Proposed Rule makes certain that the aid is given in a way that better conforms with *Zelman*, because without a secular option there would be no “true choice.”

Therefore, the Agencies should *require* that there be secular alternatives rather than state they are “a significant factor” in determining whether the program affords a genuinely independent and private choice. Numerous courts have recognized that secular options are not just a factor; they are a requirement for constitutionality.<sup>19</sup> This will not disqualify religious providers from getting funding under government programs. Instead, when there are no adequate secular options available, Agencies should either expand

<sup>15</sup> 24 C.F.R. § 5.109; 38 C.F.R. § 50.2; 7 C.F.R. § 16.4; 34 C.F.R. § 76.52; 29 C.F.R. § 2.33; 45 C.F.R. § 87.3.

<sup>16</sup> See *Everson v. Board of Education of the Township of Ewing*, 330 US 1 (1947).

<sup>17</sup> *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

<sup>18</sup> USDA, ED, HUD, and DOJ should change the language in the final rule to match that of other Agencies regarding “adequate secular alternatives.”

<sup>19</sup> E.g., *United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 425 (8th Cir. 2007) (quoting *Witters v. Wash. Dep’t of Servs. for the Blind*, 474 U.S. 481, 488 (1986)) (prison program not “indirect aid” because people did not “‘have full opportunity to expend . . . aid on wholly secular’ programs”). Courts describe the secular option as essential to *Zelman*. See, e.g., *Moses v. Ruszkowski*, 458 P.3d 406, 414 (N.M. 2018) (describing *Zelman* as “upholding a publicly financed school voucher program that was neutral with respect to religion and provided aid to families who exercised an independent choice regarding whether to enroll in public or private school”); *Anderson v. Town of Durham*, 895 A.2d 944, 955 (Me. 2006) (describing *Zelman* as “public tuition subsidies to students to attend sectarian educational institutions may be permissible under the Establishment Clause if the financial assistance program has a valid secular purpose, provides benefits to a broad spectrum of individuals who can exercise genuine private choice among religious and secular options, is paid through the students’ parents, and is neutral toward religion”); *Eulitt ex rel. Eulitt v. Maine Dep’t. of Educ.*, 386 F.3d 344, 348 (1st Cir. 2004) (describing *Zelman* as “indirect public aid to sectarian education is constitutionally permissible when the financial assistance program has a valid secular purpose, provides benefits to a broad spectrum of individuals who can exercise genuine private choice among religious and secular options, and is neutral toward religion” (emphasis added)).

the universe of available and adequate providers to include secular options or apply the “direct aid” requirements to the funding<sup>20</sup> to protect beneficiaries from religious coercion.

**The Proposed Rule clarifies the eligibility of religious providers and the applicability of program requirements.**

The Proposed Rule clarifies that the Agencies will not, in their selection of service providers, discriminate on the basis of an organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization that has the same capacity to effectively provide services. The Proposed Rule also states that the Agencies will not disqualify any organization from participating in a program simply because that organization has indicated it may request an accommodation.

We support this change because it will better protect beneficiaries. The 2020 Rule appeared to guarantee religious exemptions for organizations even when not warranted and even if such exemptions could harm or deny services to people who rely upon these programs. There was no acknowledgment of the constitutional limits on the government’s ability to grant these exemptions. The Establishment Clause prohibits the government from granting religious exemptions that cause harm to others; any exemption the government grants “must be measured so that it does not override other significant interests”<sup>21</sup> or “impose unjustified burdens on other[s].”<sup>22</sup>

However, the Agencies should also remove the religious exemption language from the provisions setting out program requirements. Because the exemption language directly follows the constitutionally required prohibition on the direct funding of explicitly religious activities, it could be misread to suggest that a religious exemption could be given to this requirement when, in fact, it cannot. Adding it as a standalone provision, and/or moving it to a more appropriate location in the Proposed Rule, is clearer and less likely to invite confusion.

In these standalone provisions, there is slight variation among the Agencies in the language “subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.”<sup>23</sup> For the sake of clarity and uniformity, the Agencies with the non-standard language should revise their provisions, particularly if the language is kept in the program requirements section.

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<sup>20</sup> Proposed Rule at 2400-2401.

<sup>21</sup> *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005); see also *Estate of Thornton v. Caldor, Inc.* 472 U.S. 703, 709-10 (1985) (“unyielding weighting” of religious interests of those taking exemption “over all other interest” violates Constitution).

<sup>22</sup> *Cutter*, 544 U.S. at 726. See also *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n. 8 (1989) (religious accommodations may not impose “substantial burdens on nonbeneficiaries”).

<sup>23</sup> Proposed Rule at 2402.

**The Proposed Rule eliminates a sweeping religious exemption provision added to the 2020 Rule that, contrary to Title VII, permitted widespread employment discrimination.**

The original faith-based regulations wrongly extended the Title VII religious employer exemption to government funded positions.<sup>24</sup> This policy has been highly problematic and controversial since it was adopted.<sup>25</sup>

The 2020 Rule exacerbated this problem by suggesting that Title VII permits religious organizations that qualify for the Title VII religious exemption to insist upon tenets-based employment conditions that would otherwise violate Title VII or the particular underlying funding statute in question.<sup>26</sup> Under Title VII, religiously affiliated employers, using their own funds, may prefer co-religionists in employment.<sup>27</sup> However, the Title VII exemption “does not confer upon religious organizations a license to make those [employment] decisions” on the basis of race, national origin, or sex.<sup>28</sup> The 2020 Rule wrongly extended the Title VII exemption to other protected characteristics, and it preempted various program nondiscrimination requirements with more robust protections.

While the Proposed Rule removes the problematic references to “tenets” for most agencies, the Department of Housing and Urban Development’s (HUD) provision remains.<sup>29</sup> We urge HUD to correct this oversight and HHS to conform its provision to the text of the other Agencies by striking reference to the Americans with Disabilities Act.<sup>30</sup>

Further, we strongly urge the Agencies to reconsider altogether the inclusion of religious exemptions that allow federally funded social services providers to discriminate in employment. No one should be disqualified from a taxpayer-funded job because they are the “wrong” religion. And the justification for the Title VII exemption—to maintain the autonomy of religious organizations and independence from the government—disappears when the organizations solicit government grants. Lastly, policies allowing religious employment discrimination in taxpayer-funded jobs raise constitutional concerns. The Establishment Clause bars government promotion or advancement of religion and government funding for the jobs transforms the Title VII religious exemption into an unconstitutional advancement of religion.<sup>31</sup>

<sup>24</sup> 69 FR 31883; 69 FR 31708; 69 FR 62164; 69 FR 41712; 68 FR 56396; 69 FR 2832; 69 FR 41375; 69 FR 41882; 69 FR 42586; 69 FR 61716.

<sup>25</sup> We urge the Agencies to work with the Office of Legal Counsel to reassess the applicability and continued validity of the opinion underlying this decision. Office of Legal Counsel, Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act, 31 Op. O.L.C. 162 (2007).

<sup>26</sup> 34 C.F.R. §§ 75.52(d)(2)(iv), (g); 76.52(d)(2)(iv), (g) & 3474.15(g); 45 C.F.R. § 87.3(f); 24 C.F.R. § 5.109(d)(2); 29 C.F.R. § 2.37; 38 C.F.R. § 50.2(f).

<sup>27</sup> 42 U.S.C.S. § 2000e-1.

<sup>28</sup> *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1166 (4th Cir. 1985), cert. denied, 478 U.S. 1020 (1986).

<sup>29</sup> 24 C.F.R. § 5.109(d)(2).

<sup>30</sup> HHS, proposed § 87.3(h).

<sup>31</sup> *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987).



**The Proposed Rule is critical to protect the religious freedom of atheists and nonreligious people.**

Safeguards for religious equality are especially important for atheists and nonreligious people, who are very likely to object to being subject to religious proselytization and coercion in order to access federally funded social services. Religiously unaffiliated people are among the most rapidly growing sectors of belief in the American population, with about three in ten adults identifying in this category.<sup>32</sup> Therefore, it is critical that federally funded social services adequately meet the needs of this significant population. Unfortunately, because of the continued push towards providing taxpayer-funded services through religious providers and the special exemptions created for such providers by the 2020 Rules, too often this is not the case.

American Atheists recently surveyed nearly 34,000 nonreligious Americans, which showed, for example, that 44% of surveyed nonreligious participants were frequently or almost always bothered by religious symbols or text in public places.<sup>33</sup> The data from this survey indicates that there is significant discrimination against nonreligious people in health care, social services, and similar fields, particularly in very religious communities. For example, 17.7% of participants reported they had negative experiences when receiving mental health services because of their nonreligious identity, 15.2% had negative experiences in substance abuse services, 21.7% had negative experiences in employment, 29.4% had negative experiences in education, and 6.2% when receiving public benefits.

Notably, the level of discrimination and stigmatization was dramatically higher for participants living in very religious areas. For example, participants living in very religious communities were 2.5 times more likely to have a negative experience in education and 3 times more likely to have negative experiences in employment, compared to those living in less religious communities. This is especially relevant to the Proposed Rules in the context of direct versus indirect services and availability of secular alternatives. In very religious communities, where nearly one-third (29.8%) of nonreligious survey participants resided, there are less likely to be secular social services available. Therefore, especially in such communities, the Agencies should make efforts to ensure that secular social services providers are also funded and to enforce violations of the Proposed Rules to protect beneficiaries.

While no one should be required to receive vital government-funded services from a religious organization to which they object, nonreligious people may be more often aware of the religious nature of service providers that they access and more likely to take action to protect their religious freedom. Organizations such as American Atheists and the Freedom From Religion Foundation (FFRF) frequently receive complaints from nonreligious beneficiaries of government-funded programs who object because they are denied services by religious service providers or because such providers violate their religious freedom.

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<sup>32</sup> Smith, G., About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated, Pew Research Center (Dec. 14, 2021), available at <https://www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/>.

<sup>33</sup> Frazer, S., El-Shafei, A., Gill, A.M, *Reality Check: Being Nonreligious in America*, Cranford, NJ: American Atheists (2020), available at [www.secularsurvey.org](http://www.secularsurvey.org).

Most frequently, individuals object because the services provided include religious components that conflict with their beliefs. While the examples below pertain to nonreligious people, many religious individuals also object to being subject to religious programming in social services that conflicts with their beliefs. However, such individuals may not be aware of or have access to organizational support to help them enforce their rights, forcing them to either endure these violations of their religious freedom or to forgo essential social services.

- In 2016, a nonreligious Ohio family, who received services from a state agency that got social service funding from the Department of Justice, faced religious discrimination, proselytization, and coercion. The family's developmentally disabled minor child received guardian ad litem services, and the guardian ad litem proselytized the parents—telling them that they couldn't be good parents without Jesus, providing them religious materials, and repeatedly promoting her church. She also coercively implied that failure to engage in religious activities may affect their case, potentially resulting in loss of custody. The parents made several complaints to the guardian ad litem's supervisors at the state agency, to no avail. Finally, the guardian ad litem coordinated with a church to introduce religious elements and ultimately baptize the child against the parents' wishes. This resulted in severe trauma to the child, both from the experience and the loss of needed services. American Atheists brought suit and settled this case after several years of litigation.
- In 2019, a student in hospitality and tourism at Valencia College in Florida sought assistance from American Atheists. Valencia College receives funds through the Department of Education. All students in a course titled "Event Industry: Meetings, Expos, Events and Conventions" were required to organize fundraising events to support a nonprofit organization, Children of the Nations, that the professor selected. Children of the Nations is an explicitly sectarian Christian organization that ministers to communities in Africa. Over the course of the semester, the students (working in teams of three) would be required to organize two events in support of the charity: an initial promotional event to raise the profile of the organization and a final fundraising event on the organization's behalf. The student assisted by American Atheists had not been referred to an equivalent secular charity, nor was she provided written notice that she had the right to request such an accommodation. Over several phone conversations with the general counsel at Valencia College, American Atheists was able to arrange for the student to complete a solo project in which she would support a secular charity that had been involved in the course in prior years.
- In 2019, a student in the nursing program at Seminole State College (SSC) in Florida reached out to American Atheists for assistance. The nursing program, a partnership between SSC and the University of Central Florida, received grant funding from the Health Resources and Services Administration (HRSA) at the Department of Health and Human Services (HHS) in addition to funding from the Department of Education.

As part of the nursing program at SSC, the student was required to complete a clinical rotation. She was assigned to Advent Health, a local medical provider affiliated with the Seventh Day Adventist church. As part of her duties during her clinical rotation, she was required to counsel patients on the benefits of prayer and accompany patients to chapel services if they required

supervision. In addition, the placement effectively denied her the ability to network with providers that might hire her in the future and was instead required to work for an employer that would discriminate against her based on her religious viewpoint in its future hiring decisions. She had not been referred to an equivalent secular health care provider for her clinic, nor was she provided written notice that she had the right to do so. In fact, the SSC staff administering the program initially denied her request to switch her clinical assignment to a secular provider. After discussing the matter with SSC's general counsel, American Atheists was able to resolve the issue constructively. The student was assigned to a different, secular health care provider for the upcoming semester.

- In 2019, American Atheists worked with a man seeking services at St. Benedict's emergency shelter in Kentucky. St. Benedict requires all its residents to submit to a breathalyzer and drug testing once a month to receive housing. The costs of drug testing are paid for by WellCare, Kentucky's Medicaid equivalent. Although the case was mooted before any in-depth factual investigation was required, it appears that St. Benedict was at least receiving Medicaid funds and may have also received funds through HHS and/or the Department of Housing and Urban Development (HUD). Recipients of St. Benedict's services are enrolled in Medicaid and WellCare during the intake process.

The man who contacted American Atheists was required to attend religious twelve-step addiction recovery support group meetings five times per week. It is a well-settled First Amendment law that twelve-step programs are religious and that a secular alternative must be made available to beneficiaries who are required to attend religious addiction recovery support groups to receive government-funded benefits.<sup>34</sup> The complainant was able to find housing shortly after contacting American Atheists, so the case did not proceed further. However, had the recipient not found housing in a timely manner, American Atheists would have pursued appropriate remedies, including referral to an alternative secular provider.

- In April 2021, a Montana health professional reported that the Montana Professional Assistance Program (MPAP) incorporates twelve-step methodology into treatment and requires weekly meetings to Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). MPAP is contracted by the Montana Board of Medical Examiners (MBME) to provide monitoring and case management for health professionals. In order to practice medicine and remain in a "non-disciplinary" tract, MPAP participants are reportedly forced to sign a contract with requirements for AA/NA meeting attendance. After the complainant was refused a request for a secular alternative, the Freedom From Religion Foundation contacted the MBME, who disputed the facts as reported and took no remedial action. The MBME is organized under the Montana Department of Labor and Industry, which has received federal funds from various agencies.

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<sup>34</sup> *Inouye v. Kemna*, 504 F.3d 705, 712, 716 (9th Cir. 2007); *see also Hazle v. Crofoot*, 727 F.3d 983 (9th Cir. 2013).

## Conclusion

Atheists and nonreligious people continue to face stigma and discrimination because of their nonreligious beliefs. The Proposed Rule will help to protect beneficiaries of federally funded social services by reversing the discriminatory and harmful rules implemented by the Trump Administration. In America, no one's ability to get vital services should depend on whether they share the religious beliefs of organizations the government selects to be providers. By reinstating these critical protections, the Biden Administration ensures that everyone will be able to access government-funded services without being deprived of their civil rights or subject to religious coercion.

If you should have any questions regarding American Atheists' support for the Proposed Rule or our recommendations for improvement, please contact me at [agill@atheists.org](mailto:agill@atheists.org).

Very truly yours,



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