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U.S. Department of Labor
Center for Faith
200 Constitution Ave. NW
Washington, D.C. 20210

Re: Addressing Barriers to Participation of Faith Organizations in DOL Programs and Funding; RIN 1290-AA52

Dear Mr. Wolfe,

On behalf of the United States Conference of Catholic Bishops (USCCB), thank you for the opportunity to comment on the Department of Labor's Request for Information "Addressing Barriers to Participation of Faith Organizations in DOL Programs and Funding" (the RFI). We appreciate the Department's interest in facilitating faith-based organizations' participation in its programs and funding opportunities.

I. Regulations that target religious organizations

The Department currently administers fourteen regulatory provisions and one statutory provision that, in whole or in part, are likely unconstitutional or likely violate the Religious Freedom Restoration Act (RFRA): 29 U.S.C. § 3248(a)(3); 20 C.F.R. §§ 641.140 (definition of "host agency"), 667.266, 668.350(g), 683.255, 683.285(b), and 684.320(g); 29 C.F.R. §§ 2 Appendices A, B, and C, 2.32(c)(1), 2.33(b)(1), 2.34(c)(3), 37.6(f), and 38.6(f).

The provisions at 2 C.F.R. part 2 are part of the Department's regulations adopted in the final interagency rule "Partnerships with Faith-Based and Neighborhood Organizations" in 2024 (the Partnerships Rule).[1] The USCCB's comments on that rulemaking, attached here, conveyed two main concerns, which remain applicable to the current regulations. First, the proposed rule imported a mistaken reading of the religious employer exemptions in Title VII, drastically narrowing the protections that the law affords religious employers. Second, the proposed rule's maintenance of the distinction between indirect and direct funding, and the prohibition on use of direct funding for "explicitly religious activities," relies on an incorrect and obsolete understanding of the Religion Clauses. We encourage you to review our comments on that proposed rule.

Besides the regulations at 2 C.F.R. part 2, the above-listed provisions each do one or more of the following:

[1] 89 Fed. Reg. 15671 (Mar. 4., 2024).

1. Prohibit the use of labor funded by the Department for construction, maintenance, or operation of religious facilities
2. Prohibit the use of direct funding from the Department for employment or training in religious activities
3. Prohibit the use of direct funding from the Department for "explicitly religious activities"[2]

For the same reasons expressed in our comments on the Partnerships Rule, these prohibitions are constitutionally suspect, at best, after *Kennedy v. Bremerton School District* and *Carson v. Makin*.[3] The third prohibition is also vulnerable under the Supreme Court's recent in decision in *Catholic Charities Bureau v. Wisconsin Labor Review Commission*.[4]

The statute in the list above is the nondiscrimination provision of the Workforce Innovation and Opportunity Act of 2014. The Department should issue a notice of nonenforcement of the offending provisions of that statute and their associated implementing regulations on the grounds that they have been rendered unconstitutional. For the other regulatory provisions not grounded in a statute, the Department should rescind them.

If the Department desires to proceed more cautiously, the Department could adopt a very narrow savings construction of the first and second kinds of prohibitions, under *Locke v. Davey*, which *Carson* read as an essentially fact-bound decision.[5] Such a construction would read those prohibitions to apply only 1) to the use of labor funded by the Department for "operation" of religious facilities in the sense that the labor of conducting worship services might qualify as such, and 2) to funds for the training or employment of clergy.

II. Employment discrimination and other regulations

The Department's regulations note that the Title VII religious employer exemption may not protect religious organizations in the context of "[s]ome DOL programs [that] were established through Federal statutes containing independent statutory provisions requiring

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[2] The Department's regulations generally describe "explicitly religious activities" as "overt religious content such as worship, religious instruction, or proselytization;" see, e.g., 2 C.F.R. § 2.32(c)(1).
[3] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Carson as next friend of O. C. v. Makin*, 596 U.S. 767 (2022).
[4] *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250 (2025) ("petitioners' eligibility…ultimately turns on inherently religious choices (namely, whether to proselytize or serve only co-religionists")).
[5] *Carson*, 596 U.S. at 789 ("*Locke* cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits."); *see Locke v. Davey*, 540 U.S. 712 (2004).

that recipients refrain from discriminating on the basis of religion."[6] The application of such requirements to religious organizations' employment decisions will foreseeably impose substantial burdens on religious organizations' ability to maintain their religious identity. Recent precedent also suggests that even a generally applicable prohibition on religious discrimination violates the church autonomy doctrine when applied to religious organizations.[7] Accordingly, the Department should issue guidance clarifying that such requirements are unenforceable with regard to employment decisions made by religious employers for religious reasons.

To account for circumstances in which the Department's regulations burden religious exercise in unforeseen ways, the Department should establish and include in all relevant notices of funding opportunity a clear mechanism for requesting an exemption or accommodation under RFRA. Consistent with RFRA's burden-shifting framework, applicants should be asked only to identify their religious belief in question and how the regulation would substantially burden its exercise. The Department would then be responsible for evaluating whether it has a compelling government interest in denying the exemption or accommodation to the applicant specifically[8] and whether doing so would be the manner of advancing that interest that is least restrictive of the applicant's religious exercise.

Thank you for your consideration of these comments.

Respectfully submitted,

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[6] 29 C.F.R 2.37.

[7] *See Union Gospel Mission of Yakima Washington v. Brown*, 162 F.4th 1190 (9th Cir. 2026) (finding, in the context of a law prohibiting sexual orientation and gender identity discrimination in employment, that the church autonomy doctrine protects the right to hire "co-religionists" for non-ministerial positions when motivated by a sincerely held religious belief); *see also McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 461 (5th Cir. 2025) ("Where the church autonomy doctrine applies, its protection is total.").

[8] *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006) ("RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened.").