



Office of the General Counsel

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U.S. Department of State

Subj: Nondiscrimination in Foreign Assistance (RIN 1400-AF66); Department of State Acquisition Regulation: Nondiscrimination in Foreign Assistance (RIN 1400-AF65)

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops, we respectfully submit the following comments on two proposed rules, published in 89 Fed. Reg. 3583 (Jan. 19, 2024) and 89 Fed. Reg. 3625 (Jan. 19, 2024) (the “Grants NPRM” and the “Contracts NPRM,” respectively; together, the “NPRMs”) regarding nondiscrimination requirements applicable to grants and contracts for foreign assistance from the State Department (“State”).

I. What the Catholic Church teaches

A. Human dignity as an anthropological principle and a Gospel call

The Catholic Church teaches each person is created by God in his image at their conception, and therefore that each person has immeasurable dignity, and that we should all treat each other accordingly. As Pope Francis wrote:

The world exists for everyone, because all of us were born with the same dignity. Differences of color, religion, talent, place of birth or residence, and so many others, cannot be used to justify the privileges of some over the rights of all. As a community, we have an obligation to ensure that every person lives with dignity and has sufficient opportunities for his or her integral development.¹

¹ Pope Francis, Encyclical Letter *Fratelli Tutti* (2020), no. 118 (https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_encyclica-fratelli-tutti.html).

Saint Pope John Paul II observed that “Human persons are willed by God; they are imprinted with God's image. Their dignity does not come from the work they do, but from the persons they are.”²

Accordingly, the Church stands against all unjust discrimination, including against those among us who experience same-sex attraction or gender discordance, who are equally loved by God. They bear the full measure of human dignity we each have received through our Creator and must therefore be treated with compassion and respect.

Another fundamental tenet of our faith is that there is an order in the natural world that was designed by its Creator and that this created order is good (Gen 1:31; Ps 19:1ff.). The Church has always affirmed the essential goodness of the natural order and called on us to respect it. Pope Benedict XVI explained that the natural world has an “inbuilt order,” a “grammar” that “sets forth ends and criteria for its wise use, not its reckless exploitation.”³

What is true of creation as a whole is true of human nature in particular: there is an order in human nature that we are called to respect. In fact, human nature deserves utmost respect since humanity occupies a singular place in the created order, being created in the image of God (Gen. 1:27). To find fulfillment as human persons, to find true happiness, we must respect that order. We did not create human nature; it is a gift from a loving Creator. Nor do we “own” our human nature, as if it were something that we are free to make use of in any way we please.

A crucial aspect of the order of nature created by God is the body-soul unity of each human person. Throughout her history, the Church has opposed dualistic conceptions of the human person that do not regard the body as an intrinsic part of the human person, as if the soul were essentially complete in itself and the body were merely an instrument used by the soul. In opposition to dualisms both ancient and modern, the Church has always maintained that, while there is a distinction between the soul and the body, both are constitutive of what it means to be human, since spirit and matter, in human beings, “are not two natures united, but rather their union forms a single nature.”⁴ The soul does not come into existence on its own and somehow happen to be in this body, as if it could just as well be in a different body. A soul can never be in another body, much less be in the wrong body. This soul only comes into existence together with this body. What it means to be a human person necessarily includes bodiliness. “Human beings are physical beings sharing a world with other physical beings.”⁵

² Saint Pope John Paul II, Encyclical Letter *Centesimus Annus* (1991), no. 11 (https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html).

³ Pope Benedict XVI, Encyclical Letter *Caritas in Veritate* (2009), no. 48 (https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html).

⁴ Catechism of the Catholic Church, no. 365 (https://www.vatican.va/archive/ENG0015/_P1B.HTM) (“The unity of soul and body is so profound that one has to consider the soul to be the ‘form’ of the body: i.e., it is because of its spiritual soul that the body made of matter becomes a living, human body; spirit and matter, in man, are not two natures united, but rather their union forms a single nature.”).

⁵ International Theological Commission, *Communion and Stewardship: Human Persons Created in the Image of God* (2002), no. 26 (https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20040723_communion-stewardship_en.html).

Human bodiliness is, in turn, intrinsically connected with human sexual differentiation. Just as every human person necessarily has a body, so also human bodies, like those of other mammals, are sexually and complementarily differentiated as male or female: “Male and female he created them” (Gen 1:27). Saint Pope John Paul II reminded us that, in the Book of Genesis, we learn that “Man is created ‘from the very beginning’ as male and female: the life of all humanity—whether of small communities or of society as a whole—is marked by this primordial duality.”⁶ The Catechism of the Catholic Church affirms: “Man and woman have been created, which is to say, willed by God: on the one hand, in perfect equality as human persons; on the other, in their respective beings as man and woman. ‘Being man’ or ‘being woman’ is a reality which is good and willed by God.”⁷

Just as bodiliness is a fundamental aspect of human existence, so is either “being a man” or “being a woman” a fundamental aspect of existence as a human being, expressing a person’s unitive and procreative finality. The Congregation for the Doctrine of the Faith, the Vatican’s office that holds the primary responsibility to uphold and preserve Church doctrine, insists:

[T]he importance and the meaning of sexual difference, as a reality deeply inscribed in man and woman, needs to be noted. “Sexuality characterizes man and woman not only on the physical level, but also on the psychological and spiritual, making its mark on each of their expressions.” It cannot be reduced to a pure and insignificant biological fact, but rather “is a fundamental component of personality, one of its modes of being, of manifestation, of communicating with others, of feeling, of expressing and of living human love.” This capacity to love – reflection and image of God who is Love – is disclosed in the spousal character of the body, in which the masculinity or femininity of the person is expressed.⁸

As Pope Francis has affirmed, “The acceptance of our bodies as God’s gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation.”⁹ He has also taught that young people in particular:

need to be helped to accept their own body as it was created... “An appreciation of our body as male or female is also necessary for our own self-awareness in an encounter with others different from ourselves. In this way we can joyfully accept

⁶ Saint Pope John Paul II, Letter to Families (1994), no. 6 (https://www.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.html). Cf. Catechism of the Catholic Church, no. 2333.

⁷ *Catechism of the Catholic Church*, no. 369.

⁸ Congregation for the Doctrine of the Faith, Letter on the Collaboration of Men and Woman in the Church and in the World (2004), no. 8 (https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collaboration_en.html); quotations from Congregation for Catholic Education, Educational Guidance in Human Love: Outlines for Sex Education (1983), no. 5 and no. 4, respectively.

⁹ Pope Francis, Encyclical Letter *Laudato Si'* (2015), no. 155 (https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html).

the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment.”¹⁰

The understanding that each person whom our social service ministries encounter is, him or herself, “the work of God the Creator,” is what makes Catholic charitable service Catholic – and what makes it especially effective.

From the Old Testament to the teaching of Jesus as written in the Gospels, the Judeo-Christian tradition has emphasized care for the stranger and care for the poor as essential ways of knowing God¹¹ and living a good and holy life. For centuries, the experience of the Church in the United States through her charitable works and institutions has emphasized these critical elements of Christianity, famously captured in the parable of the Good Samaritan and in the twenty-fifth chapter of St. Matthew’s Gospel.

Care for the hungry, the stranger, the sick, and the homeless are central components of how Christians have traditionally understood they will be judged by God at the conclusion of their lives and are what Pope Francis has referred to as the “Great Criterion.”¹² The Church has taught that these obligations flow from the inalienable dignity of each human person, based on the image and likeness of God in which every man and woman is created. A good society, then, upholds this dignity of each person by promoting the “common good,” a concept of Catholic social thought with ancient origins that requires society to support conditions that allow for the flourishing of its people. The “demands of the common good” include justice and peace, as well as “the provision of essential services to all, some of which are at the same time human rights: food, housing, work, education, and access to culture, transportation, basic health care, the freedom of communication and expression, and the protection of religious freedom.”¹³

B. Ideological colonization

As the post-war world order emerged in the 1960s, the Catholic Church began to warn against “ideological colonization,” which in current use generally refers to the conditioning of foreign assistance by Western countries on acceptance of abortion, contraception, and (more recently) false ideas about human sexuality and sexual difference. In 1961, Pope John XXIII stated:

There is also a further temptation which the economically developed nations must resist: that of giving technical and financial aid with a view to gaining control over the political situation in the poorer countries, and furthering their own plans for world domination. Let us be quite clear on this point. A nation that acted from these motives would in fact be introducing a new form of colonialism—cleverly

¹⁰ Pope Francis, Post-Synodal Apostolic Exhortation *Amoris Laetitia* (2016), no. 285 (https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf); quotation from *Laudato Si'* (2015), no. 155.

¹¹ See, e.g., Lv. 19:34 (“...you shall love the alien as yourself; for you too were once aliens in the land of Egypt”); Deut. 10:19 (same); Mt. 25: 35-40 (“For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me...”).

¹² Pope Francis, Apostolic Exhortation *Gaudete et Exsultate* (2018), no. 95.

¹³ See *Compendium of the Social Doctrine of the Church*, no. 165-166 (2004).

disguised, no doubt, but actually reflecting that older, outdated type from which many nations have recently emerged. Such action would, moreover, have harmful impact on international relations, and constitute a menace to world peace.¹⁴

Pope Benedict XVI admonished “the so-called ‘first’ world [that] has sometimes exported and is exporting toxic spiritual refuse which contaminates the peoples of other continents, including in particular the population of Africa. In this sense, colonialism finished at a political level has never really ended.”¹⁵

Last year, Pope Francis lamented that “more and more resources have been spent on imposing forms of ideological colonization, especially on poorer countries, and directly connecting the provision of economic aid to the acceptance of such ideologies. This has strained debate within international organizations, precluding fruitful exchanges.”¹⁶ In another address earlier this year, he returned to this theme:

Regrettably, in recent decades attempts have been made to introduce new rights that are neither fully consistent with those originally defined nor always acceptable. They have led to instances of ideological colonization, in which gender theory plays a central role; the latter is extremely dangerous since it cancels differences in its claim to make everyone equal. These instances of ideological colonization prove injurious and create divisions between states, rather than fostering peace.¹⁷

II. Comments on provisions of the NPRMs

A. Nondiscrimination requirements

The NPRMs propose to establish new nondiscrimination protections for beneficiaries of foreign assistance grants and contracts from State, and for employees who are “engaged directly in the performance of [such grants or contracts] and whose work will be subsidized in whole or in part by Federal foreign assistance funds under this award....”¹⁸ Among the protected classes in the proposed nondiscrimination requirements are “religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy ... marital status, parental status, [and] political affiliation.” The Grants NPRM, but not the Contracts NPRM, also lists as a protected class “any factor not expressly stated in the award.” Neither NPRM offers any

¹⁴ Pope John XXIII, Encyclical Letter *Mater et Magistra* (1961), nos. 171-172 (emphasis added) (https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html).

¹⁵ Pope Benedict XVI, Homily, October 4, 2009 (https://www.vatican.va/content/benedict-xvi/en/homilies/2009/documents/hf_ben-xvi_hom_20091004_sinodo-africa.html).

¹⁶ Pope Francis, Address to the Diplomatic Corps Accredited to the Holy See, 2023 (<https://www.vatican.va/content/francesco/en/speeches/2023/january/documents/20230109-corpo-diplomatico.html>).

¹⁷ Pope Francis, Address to the Diplomatic Corps Accredited to the Holy See, 2024 (<https://www.vatican.va/content/francesco/en/speeches/2024/january/documents/20240108-corpo-diplomatico.html>).

¹⁸ See 2 CFR 602.20(b)(2) and 602.40(a)(2); 48 CFR 652.225-72(a)(2).

definitions for these terms either expressly or by reference to their use in other statutes or regulations.

We understand that in some cases assistance that would be governed by these NPRMs is provided in countries where the law or cultural norms may, to varying extents, tolerate discrimination against people based on their mere status of experiencing same-sex attraction or gender discordance. As such – although the NPRMs provide no data to suggest this occurs – it would be unconscionable to deny basic humanitarian aid to a person simply because they are not living in accord with human flourishing and right reason. The Church opposes such unjust discrimination,¹⁹ and to the extent prohibition of it is the aim of these NPRMs, we support them.

Unfortunately, it is not all as simple as that. Domestically, prohibitions on discrimination on the basis of sexual orientation and gender identity (SOGI) have been applied in ways that protect *conduct* rather than *status* – for instance, entering into a civil marriage with an individual of the same sex, or seeking medical procedures intended to alter one’s physical features to correspond with a “gender identity” that is inconsistent with one’s sex. And such applications have been enforced against religious organizations or persons in ways that seek to force them to affirm what they sincerely believe to be false, or to facilitate conduct that they sincerely believe to be wrong or immoral.²⁰

Similarly, prohibitions on discrimination the basis of pregnancy have been interpreted to apply to abortion, which likewise threatens religious entities’ free exercise, to say nothing of the terrible harm to women and their preborn children. Such interpretations, which in our view are erroneous, have typically arisen when the protected class of pregnancy is joined by express inclusion of related medical conditions.²¹ The absence of such further terms in the NPRMs thus risks compounding uncertainty as to the intent of State, which should be addressed in a final rule. This should be done in favor of excluding abortion and thereby protecting pregnant women and their children in an authentic and life-affirming manner.

The NPRMs nevertheless do not consider these foregoing complexities or provide any clear interpretations or guidance for how covered entities should navigate them. Most acutely, the NPRMs barely acknowledge that their requirements implicate religious liberty – the only nod toward that problem is the provision in the Contracts NPRM suggesting that waivers from the nondiscrimination requirements *might* be granted to protect religious organizations’ rights to maintain their religious identity in employment contexts (discussed further below). The NPRMs do not grapple with the application of the First Amendment, the Religious Freedom Restoration

¹⁹ Congregation for the Doctrine of the Faith, *Considerations regarding proposals to give legal recognition to unions between homosexual persons* (1992), no. 4 (“[A]ccording to the teaching of the Church, men and women with homosexual tendencies ‘must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided’” (citing to *Catechism of the Catholic Church*, No. 2358; cf. Congregation for the Doctrine of the Faith, *Letter on the pastoral care of homosexual persons* (October 1, 1986), 10.

²⁰ See, e.g., *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (requirement that website designer must design site conveying message that violates her religious beliefs violated the Free Speech Clause); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368 (5th Cir. 2022) (requirement that religious healthcare providers must perform and insure abortions and gender transition procedures violated the Religious Freedom Restoration Act).

²¹ E.g., 88 Fed. Reg. 54714 (Aug. 11, 2023) (proposed EEOC regulations interpreting the Pregnant Workers Fairness Act).

Act (42 U.S.C. 2000bb), or sections 702(a) and 703(e)(2) of Title VII of the Civil Rights Act of 1972.

Consider the following scenarios (and, for each, whether the answer is different for subgrantees or subcontractors versus primary grantees or contractors, or domestic versus foreign entities, or entities that would have a religious or moral objection to such a requirement versus those that would not):

- In the case of foreign assistance for the provision or facilitation of health care services, is there any application of the NPRMs that would require grantees or contractors to provide or facilitate gender transition procedures or abortions?
- In the case of foreign assistance for educational programs or activities, is there any application of the NPRMs that would compel grantees or contractors to teach contested theories about human sexuality and sexual difference?
- In the case of foreign assistance for counseling or social services, is there any application of the NPRMs that would require affirmation of a person's asserted sexual orientation or gender identity?
- In the case of foreign assistance for aid specifically to women, is there any application of the NPRMs in which grantees or contractors would be required to admit into their programs biological males who self-identify as women (rather than referring them to a comparable program for men)?
- In the case of foreign assistance for facilities or programs where women and men are separate, for safety, privacy, or cultural sensibilities, is there any application of the NPRMs in which grantees or contractors would be required to place biological males who identify as women with women, or vice versa?
- In any case, would a religious grantee or contractor subject to the NPRMs (respectively) be forced to hire or retain employees or volunteers who, through word or deed, contradict the organization's religious beliefs?

In each case, covered entities should be able to read the final rules and understand what their rights and obligations are. This is not simply a question of good policy and good governance, but of law. The broad grant of statutory authority that State claims under the Foreign Assistance Act does not absolve State of its obligation under the Administrative Procedure Act to consider important aspects of the issue that is the subject of this rulemaking and to engage in reasoned decision-making on them.

B. Waivers of nondiscrimination requirements

The NPRMs also establish a mechanism for State to waive the application of these requirements at State's discretion. The Contracts NPRM, but not the Grants NPRM, notes that a purpose of such a waiver may be "to allow a religious corporation, association, educational institution, or society to employ individuals of a particular religion to carry out the activities under the award in a manner consistent with its religious beliefs."

The inclusion of this language, which is substantially similar to the exemption for religious employers in section 702 of Title VII, raises a number of questions.

First, while the meaning of Title VII’s exemption for religious employers is disputed, it is properly read to shield a religious employer from *any* claim under Title VII when that employer has made an employment decision on the basis of religion.²² A key reason is the definition of “religion” in Title VII. But the Contracts NPRM does not define “religion,” nor does it expressly say that this language is meant to incorporate the body of caselaw interpreting the Title VII religious employer exemptions. So covered entities under the Contracts NPRM can only guess what State means by it.

Second, this language is omitted from the Grants NPRM, but there is no reason that religious contractors would merit greater protection for their religious freedom than grantees. Religious grantees are similarly protected under sections 702 and 703(e)(2) of Title VII, and while it may be that Executive Order 13279 independently obligates State to honor the religious freedom of contractors specifically, it is also incumbent on State to construe the Foreign Assistance Act in a manner consistent with other applicable federal laws.

III. Impact on Catholic ministries; Conclusion

The footprint of Catholic charitable and social service worldwide is massive. As of 2021, the health, charity, and assistance institutions managed by the Catholic Church included: 5,405 hospitals, 14,205 dispensaries (health clinics), 567 hospitals for people with leprosy, 15,276 homes for the elderly, chronically ill and those with disabilities, 9,703 orphanages, 10,567 nursery schools, 10,604 marriage counseling centers, and 3,287 social rehabilitation centers.²³

Catholic charitable and social service agencies serve all in need, without regard to race, religion, sex, or any other characteristic, because we believe that each person has immeasurable dignity and worth as a child of God. The same core beliefs about human dignity and the wisdom of God’s design that motivate Catholics to serve those in need also shape our convictions about care for preborn children, marriage, sex, and the immutable nature of the human person. These commitments are inseparable.

It is common for Catholic ministries to partner with the government in its foreign assistance efforts. The aforementioned aspects of the NPRMs could chill Catholic entities’ participation in foreign aid programs, potentially depriving the intended beneficiaries of those programs of the excellent care and service that Catholic ministries provide. State cannot finalize the proposed rules without reckoning with their detrimental impact on the quantity and quality of organizations eligible to partner with the federal government in providing this crucial aid.

If the NPRMs do not cure the problems discussed above, their effect as a mechanism of ideological colonization may, per the words of Pope Francis, “prove injurious...rather than fostering peace.” We wholeheartedly support the goal of ensuring that aid to our less fortunate

²² For a full treatment of this question, please see pages 8-14 of the comments the USCCB filed on the Equal Employment Opportunity Commission’s proposed rule implementing the Pregnant Workers Fairness Act, available at https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/2023.USCCB_CUA_comments.PWFA_regulations.pdf.

²³ “Vatican - Catholic Church Statistics 2023”, available at https://www.fides.org/en/news/74319-VATICAN_CATHOLIC_CHURCH_STATISTICS_2023.

brothers and sisters abroad is free of unjust discrimination. We respectfully urge State to also ensure that the NPRMs honor religious liberty and avoid forcing harmful ideologies on sovereign states or their citizens as a price for the aid they need.

Respectfully submitted,

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