



February 18, 2021

Ms. Valerie Mills
Executive Operations Officer
Office of General Counsel
U.S. Small Business Administration
409 Third Street SW Washington, DC 20416

Re: Ensuring Equal Treatment for Faith-Based Organizations in SBA's Loan and Disaster Assistance Programs, Docket No. SBA-2021-0007, RIN 3245-AH60

Dear Ms. Mills:

The Association of Christian Schools International (ACSI) offers the following comments on the Small Business Administration's (SBA) proposed regulations noted above. ACSI is the nation's largest Protestant school association and, as such, has a strong interest in policy related to religious liberty which should allow the broadest possible freedom for all citizens, religious or otherwise. Public policy must not and cannot discriminate against religious believers. Religious liberty is the nation's First Freedom and is thus at the heart of the liberties guaranteed by the U.S. Constitution.

ACSI therefore expresses its support for the SBA's proposed regulations which would eliminate five regulatory policies which wrongly cast certain faith-based organizations as ineligible to participate in five SBA business loan and disaster assistance programs purely on the basis of their religious status. ACSI strongly agrees with the SBA that these provisions violate the Free Exercise Clause of the First Amendment and should be eliminated.

In our view, the SBA has clearly stated the need and reasons for its proposed changes. The regulations targeted for removal violate the Free Exercise Clause of the First Amendment by excluding participants in the five programs at issue solely on the basis of their religious status. The Supreme Court has made clear that this is not consistent with the Constitution. Its most recent decisions in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), and *Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012 (2017) are unequivocal that there may not be unequal treatment of the religious simply on the basis of religious status. Objections to the SBA proposal based on separation of church and state are not relevant: the Court has clarified that Free Exercise does not have room for the unequal treatment of the religious as part of misguided attempts to prevent a religious establishment.

It should also be noted that the use of funds is not at issue. The unconstitutional regulations which the SBA seeks to eliminate currently ban access to *any* funds *only* by the religious, no matter what the legitimate use of the funds may involve. The proposed action remedies this by allowing religious

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entities access to funds for which they have every right for the appropriate uses of those funds. Religious status is not a Constitutional reason for barring access to funds that will be used for their legal purposes.

In short, the Free Exercise Clause does not allow the government to declare an otherwise-eligible recipient ineligible for a generally available benefit simply because of the recipient's religious character. The provisions which the SBA seeks to delete do precisely that. By deleting those provisions, then, the SBA will "ensure in [the SBA's] business loan and disaster assistance programs that equal treatment for faith-based organizations that the Constitution requires."

For these reasons, we support the SBA's proposed changes and urge the SBA to adopt them. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. George Tryfiates".

P. George Tryfiates
Director for Government Affairs