ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

December 22, 2025

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RE: Petition for Rulemaking: Rescinding Religious-Liberty Discrimination in USDA Rural Development Regulations

Dear Secretary Rollins, Acting Under Secretary Lindsey, and Administrators Kelly, Claeys, and Elmshaeuser:

Thank you for your critical work protecting all Americans' rights to participate in federal programs on a fair and equal basis. As Secretary Rollins has explained, religious organizations and churches deserve equal access to rural development programs. Yet prior administrations enacted certain U.S. Department of Agriculture (USDA) regulations that single out religious entities for exclusion just because they engage in religious activities. These regulations are outdated, fail to account for constitutionally required safeguards for religious freedom, and conflict with President Trump's executive orders protecting religious liberty.

Thus, pursuant to 7 C.F.R. § 1.28, Alliance Defending Freedom (ADF) respectfully submits this petition for rulemaking to repeal three specific discriminatory rules to help ensure that rural development programs operate fairly for all Americans.

ADF is an alliance-building legal organization whose mission is to keep the door open for the Gospel by advancing every person's God-given right to live and speak the truth. ADF has handled many legal matters involving religious liberty, the First Amendment, and federal programs.

ADF submits this petition for rulemaking to ask USDA to protect religious liberty specifically by ensuring that religious believers may participate in rural development programs on an equal footing with other organizations. Please let us know if we can be of further assistance in your efforts.

Respectfully submitted,

/s/ Julie Marie Blake

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PETITION FOR RULEMAKING

EXECUTIVE SUMMARY

This petition provides USDA a roadmap for correcting a source of religious discrimination in the agency's rural development programs.

Several USDA regulations single out and exclude religious organizations and uses from rural development programs. In particular, 7 C.F.R. § 5001.115(r) declares that religious structures where religious activities occur, and the activities themselves, are ineligible for loan guarantees for the Community Facilities, Water & Waste Disposal, Business & Industry, and Rural Energy for America programs. Similarly, 7 C.F.R. § 4280.323(k) prohibits religious activities from participating in the Rural Microentrepreneur Assistance Program. Finally, the program governing Business and Industry loans under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) contains a parallel exclusion. 7 C.F.R. § 4279.117(i). Although CARES Act funding may have lapsed, we recommend that the department's rulemaking address this religious exclusion to prevent precedential effect in the future.

All three provisions are inconsistent with constitutional and statutory protections for religious exercise. As explained in more detail below, the Supreme Court has clarified that the Constitution does not require excluding religious entities and activities from government funding. In fact, the First Amendment's religious freedom protections preclude agencies from disqualifying religious organizations and activities from government programs because they are religious. *See generally Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020), and *Carson v. Makin*, 596 U.S. 767 (2022). For similar reasons, these provisions are inconsistent with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, et seq.

We recommend that the Department propose and finalize a rule to delete all three of these provisions: 7 C.F.R. § 5001.115(r), 7 C.F.R. § 4280.323(k), and 7 C.F.R. § 4279.117(i). Removing these discriminatory provisions would be an important step toward ensuring all USDA programs are operated consistent with religious liberty and fairness for all Americans.

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INTRODUCTION

ADF submits this petition for rulemaking to ask the USDA to protect religious liberty by repealing certain provisions that exclude and discriminate against religious activities, facilities, and entities in domestic Rural Development (RD) loan programs. These regulations prevent otherwise-eligible persons and activities from receiving federal loans because of their religious exercise (such as by excluding churches or religious ministries from getting otherwise-available rural loan guarantees for buildings where religious activities occur). 7 C.F.R. §§ 5001.115(r), 4280.323(k), and 4279.117(i).

These regulations violate the Free Exercise Clause of the First Amendment as interpreted in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020), and *Carson v. Makin*, 596 U.S. 767 (2022) (collectively, the "*Carson* trilogy"). Similarly, the regulations violate rights protected under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, *et seq*.

Enacted by prior administrations, these regulations rest on outdated Establishment Clause jurisprudence. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). The regulations unduly restrict the actions of religious recipients of federal funds based on attempts to avoid Establishment Clause concerns that the Supreme Court has repudiated.

THE RULE REQUESTED

ADF requests that USDA issue a proposed rule, in compliance with the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., amending USDA's RD regulations (Title 7 of the Code of Federal Regulations, Subtitle B, Chapters XLII & L), by repealing the following provisions:

> 7 C.F.R. § 5001.115(r) (Ineligible projects—general).
> Delete entire provision without replacement.
>
> 7 C.F.R. § 4280.323(k) (Ineligible microloan purposes and uses).
> Delete entire provision without replacement.
>
> 7 C.F.R. § 4279.117(i) (Ineligible purposes and entity types).
> Delete entire provision without replacement.

PETITIONER'S INTEREST

ADF is an alliance-building legal organization. ADF's mission is to keep the door open for the Gospel by advancing every person's God-given right to live and speak the truth. ADF pursues its mission through litigation, training, strategy, and

funding. ADF has handled many legal matters involving federal agriculture programs, religious liberty, and the First Amendment. *See, e.g., Care Net Pregnancy Center of Windham Cnty. v. U.S. Dept. of Agriculture*, 896 F. Supp. 2d 98 (D.D.C. 2012).

ADF submits this petition under USDA regulations, 7 C.F.R. § 1.28, the APA, 5 U.S.C. § 553(e), and the First Amendment of the U.S. Constitution, U.S. Const. amend. I. ADF asks USDA to issue rules to conform USDA RD regulations with federal religious-liberty requirements.

BACKGROUND

I. The U.S. Constitution and Congress require federal agencies to include religious believers in public programs.

Religious believers have an equal right to participate in federal programs. The First Amendment's Free Exercise Clause and the Religious Freedom Restoration Act forbid excluding religious entities from federal government programs due to their religious character or activities—that is, just because they are religious or do religious things. Prior Establishment Clause doctrines that required excluding religious entities are no longer good law.

The following principles are a shorthand list of religious-liberty protections that should guide federal programs:

- The government must allow religious entities—both individuals and organizations like churches—to participate in generally available public programs.
- The government cannot exclude religious entities from participation either because they are religious or because they engage in religious activities.
- The government cannot require religious entities to secularize to participate, nor can it limit their participation to secular activities.
- The government may not discriminate based on religious identity or based on religious activity or content.
- The government may need to provide religious applicants with opt-outs from program criteria that would burden their religious exercise.
- The government may not discriminate against religious beliefs or practices.
- The government must be tolerant and respectful of religion without demonstrating even subtle hostility or other departures from neutrality.
- The government may not treat secular entities more favorably than religious entities.

- If the government retains the discretion to give individual exemptions, it must do the same to avoid substantially burdening religious exercise.
- The government may not substantially burden religious exercise (including by burdening religiously informed beliefs or activities) if it can achieve its interests in any other way, or if it does not have a compelling interest in doing so.
- Federal officials in general must consider and accommodate religious exercise when they create and implement federal programs.
- Religious people and organizations may take advantage of a generally available public benefit, and they may use the program's benefits for religious purposes and uses consistent with the relevant program.
- Government dollars may flow to religious entities through neutrally administered government programs, and that spending does not violate the Establishment Clause.
- Federal officials must not coerce any religious exercise and must provide neutrality among program participants.
- Federal officials are free to include religious entities in public programs for religious activities and uses.

Under these doctrines, the government may not exclude religious organizations or activities from federal programs because of their religious character. Of course, other laws, like the Free Speech Clause, protect religious and non-religious organizations alike in other ways. But this petition is focused on general, across-the-board constitutional and statutory protections for religious liberty in particular—protections repeatedly upheld by the Supreme Court.

A. Under the *Carson* trilogy, the Free Exercise Clause prohibits government discrimination based on religious identity, activity, or content in public programs.

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof …." U.S. Const. amend. I. The first part, the Establishment Clause, protects against the "establishment" of religion, such as a government-sanctioned church (e.g., the Church of England). The second part, the Free Exercise Clause, protects individuals and religious institutions' right to freely practice—that is, "exercise"—their religion.

The Free Exercise Clause "categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion). Excluding "religious observers from otherwise available public benefits" or programs "effectively penalizes the free exercise of religion," *Carson*, 596 U.S. at 778, 780 (citation modified), by forcing

believers "to choose between the exercise of a First Amendment right and participation in an otherwise available public program," *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). It "puts the same kind of burden" on religious exercise "as would a fine imposed" on the exercise itself. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

A law that imposes special disabilities or unequal treatment on account of religious belief or religious status thus merits strict scrutiny and is presumptively invalid. *McDaniel*, 435 U.S. at 628–29 (invalidating the exclusion of clergy from a legislature); *Torcaso v. Watkins*, 367 U.S. 488, 496 (1961) (negating the religious oath requirement for holding office). As the Supreme Court has said, "[i]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Sherbert*, 374 U.S. at 404.

In three recent cases culminating in *Carson*, the Supreme Court explained that the Free Exercise Clause prohibits the government from discriminating based on religious identity, activity, or content in public programs. *Carson*, 596 U.S. at 778–81; *Espinoza*, 591 U.S. at 475–76; *Trinity Lutheran*, 582 U.S. at 462. Officials thus may not "exclude[ ] religious observers from otherwise available public benefits" because of their "religious character" or "religious exercise." *Carson*, 596 U.S. at 778, 780–81, 785.

Any such discrimination is subject to "strict scrutiny," *id.* at 781—"the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Since the clarification made by the *Carson* trilogy, the Supreme Court has yet to find any that religiously discriminatory program satisfies strict scrutiny. It's safe to say that imposing "special disabilities on the basis of religious views or religious status" is "odious to our Constitution" and "cannot stand." *Trinity Lutheran*, 582 U.S. at 460–61, 467.

To be sure, the First Amendment does not require the government to create public benefits programs in the first place, or to include private organizations in such programs. *See, e.g.*, *Espinoza*, 591 U.S. at 487. But once the government extends benefits to private organizations, it must extend those benefits to qualifying religious entities no less than to other entities. *Id.* The government for instance "need not subsidize private education . . . but once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Espinoza*, 591 U.S. at 487.

After all, the Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Trinity Lutheran*, 582 U.S. at 463 (citation modified). The protection against indirect prohibition on religion ensures a religious entity's "right to participate in a

government benefit program without having to disavow its religious character." *Id.* at 463, 467.

The *Carson* trilogy was developed over three cases:

First, in *Trinity Lutheran*, the Supreme Court held that Missouri's exclusion of churches from a direct grant program violated the Free Exercise Clause by disqualifying otherwise-eligible recipients "from a public benefit solely because of their religious character." *Trinity Lutheran*, 582 U.S. at 462. In this case, ADF represented a church-run preschool that applied for a state grant to use a recycled tire program designed to promote safe playground surfaces. *Id.* at 454–55. Although the preschool otherwise qualified for the grant, Missouri denied the church access to the program under a state provision restricting aid to religious applicants. *Id.* at 455–56. But such an exclusion based on "religious status" or "religious identity," the Court held, imposes a "penalty on the free exercise of religion that trigger[ed] the most exacting scrutiny," *id.* at 458, 462, 465 n.3. Missouri's discrimination put Trinity Lutheran to an unconstitutional choice: the church "may participate in an otherwise available benefit program or remain a religious institution." *Id.* at 462. It could not do both. *See id.* This was the first high court decision to find not only that the Establishment Clause permits access for a religious institution to public programs, but also that the Free Exercise Clause requires such access. *Id.* at 466–67.

Second, in *Espinoza*, the Supreme Court held that the government cannot exclude a religious school from a school scholarship program just because the school is religious. *Espinoza*, 591 U.S. at 477–79. The Court thus held that the Montana Supreme Court violated the Free Exercise Clause when it invalidated, on state constitutional grounds, a private-school-choice program because it included faith-based schools. *Id.* Eliminating a government program for all qualified applicants, just because religious institutions are eligible, violates the Free Exercise Clause. *Id.* at 487–89.

Both *Trinity Lutheran* and *Espinoza* concluded that the government cannot discriminate against a religious entity that wants to participate in a generally available public program because of the entity's religious character or status. *Espinoza*, 591 U.S. at 479; *Trinity Lutheran*, 582 U.S. at 461–62, 466.

Third, in *Carson*, the Supreme Court went one step further—it held that the government may not decline to provide funds that might be put to a religious use, like religious instruction. *Carson*, 596 U.S. at 786–88. Maine had excluded religious ("sectarian") schools from a scholarship program for students in rural school districts. *Id.* at 774–75. But the Court held that Maine could not prevent families from using otherwise generally available tuition assistance benefits at religious schools just because those schools also provide religious instruction. *Id.* at 786–88.

The Court had "never suggested that use-based discrimination is any less offensive to the Free Exercise Clause" than status-based discrimination. *Id.* at 787. And "any status-use distinction lacks meaningful application not only in theory, but in practice as well." *Id.* at 787–88. Maine thus could not exclude a religious school that planned to use the funds to "promote[ ] a particular faith and present[ ] academic material through the lens of that faith." *Id.* at 787.

Carson makes clear that the First Amendment's nondiscrimination principle applies with equal force to excluding private organizations for their religious activities and to refusing to fund activities imbued with religious content. *Id.* So regulations limiting public funding to religious entities' "secular" or "nonsectarian" activities are just as unconstitutional as regulations excluding religious entities altogether. *See id.* In addition, this prohibition applies "[r]egardless of how the benefit and restriction are described," such that officials may not "operate[] to identify and exclude otherwise eligible schools on the basis of their religious exercise" through any means. *Id.* at 789. If a religious entity could participate in a program but for its religious character or exercise, strict scrutiny applies. *Id.*

The Supreme Court applied the *Carson* trilogy in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), to explain that "a government cannot condition the benefit of free public education on parents' acceptance" of a burden on their religious practice. *Id.* at 530. In *Mahmoud*, the Court held that parents need not resort to private school or homeschooling to avoid public school curricula that burdened their children's religious development. *Id.* The parents had an equal right to public education, and so they had the right to receive notice of and opt-outs from instruction that burdened their religious exercise. *Id.* at 560–62.

In sum, under the *Carson* trilogy, the government must allow religious entities—both individuals and organizations like churches—to participate in generally available public programs. And the religious activities of those organizations cannot be used as a basis to exclude religious applicants from a government program.

B. The Free Exercise Clause requires strict scrutiny of government conditions targeting religion.

The Free Exercise Clause has been interpreted to impose minimal scrutiny on government programs that burden religious exercise if they are neutral and generally applicable. *See Employment Div. v. Smith*, 494 U.S. 872 (1990). But government programs that single out religious groups or activities for negative treatment implicate strict scrutiny even after *Smith*.

Under *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) ("*Lukumi*"), a law prohibiting religious practices is subject to strict

scrutiny if it "discriminate[s] on its face" or its object "is to infringe upon or restrict practices because of their religious motivation." *Id.* at 533. Indeed, the Supreme Court has "been careful to distinguish [neutral and generally applicable] laws from those that single out the religious for disfavored treatment." *Trinity Lutheran*, 582 U.S. at 460. And any such "law that targets religious conduct for distinctive treatment ... will survive strict scrutiny only in rare cases." *Lukumi*, 508 U.S. at 546.

The government may not act in a manner "hostile to … religious beliefs" or with even "'subtle departures from neutrality.'" *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 638 (2018) (quoting *Lukumi*, 508 U.S. at 534). In *Masterpiece Cakeshop*, for example, the Supreme Court held that the Colorado Civil Rights Commission violated the religious freedom of ADF's client Jack Phillips by failing to be "tolerant" and "respectful" of his beliefs while considering his case. *Id.* at 639. To determine whether government action is neutral, courts must "scrutinize the history, context, and application of" the challenged government conduct. *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021).

Strict scrutiny also applies if the government burdens religious exercise but exempts or fails to regulate comparable secular conduct. Officials may not "single[] out" religious entities for "especially harsh treatment." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020) (per curiam) (enjoining a state rule that treated religious services less favorably than secular activities). Government action is thus not neutral and generally applicable if it "treat[s] … comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In *Tandon*, California's COVID restrictions were not generally applicable, and thus triggered strict scrutiny, because they treated gatherings at places like hair salons, retail stores, movie theatres, and indoor restaurants more favorably than at-home religious gatherings. *Id.* at 63. Similarly in *Lukumi*, the City of Hialeah could not ban animal sacrifice in a way that precluded the religious practices of Santeria while exempting other forms of animal killing for food, including hunting. *Lukumi*, 508 U.S. at 524–28, 537–39.

The government fails the strict scrutiny test when it leaves "appreciable damage to [its] supposedly vital interest unprohibited." *Espinoza*, 591 U.S. at 486 (citation modified). In much the same way, a purportedly neutral and generally applicable policy cannot be used to burden religious exercise if it has "a mechanism for individualized exemptions." *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021).

In sum, the government may not discriminate against religious beliefs or practices in relation to other activities.

C. The Religious Freedom Restoration Act (RFRA) buttresses these Free Exercise Clause protections.

The First Amendment provides a baseline of religious-liberty protections—but it's not a ceiling. Congress also provided religious-liberty protections with respect to federal actions (including agency rules and grant decisions) when it adopted the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, et seq.

RFRA creates a statutory cause of action that applies strict scrutiny to any government action that imposes a substantial burden on religious exercise. 42 U.S.C. § 2000bb-1(b) & (c). "RFRA provides very broad protection for religious liberty," *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 680 (2020) (citation modified). It "operates as a kind of super statute, displacing the normal operation of other federal laws." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020). Enacted to protect religion beyond *Smith*'s protections, RFRA demands strict scrutiny "even if the burden [on religious exercise] results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a).

RFRA defines "exercise of religion" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A). The exercise of religion "involves 'not only belief and profession but the performance of (or abstention from) physical acts.'" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (quoting *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990)). In *Hobby Lobby*, the Supreme Court held that employers exercised religion under RFRA when they objected to covering certain items in employee healthcare plans, which triggered strict scrutiny under RFRA. 573 U.S. at 720.

RFRA applies to any government actions that "substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(b). The precedents noted above concerning burdens on religious exercise under the First Amendment apply with at least equal force under RFRA. Thus a substantial burden under RFRA would include government action that blocks "religious observers from otherwise available public benefits" or programs, because this "effectively penalizes the free exercise of religion." *Carson*, 596 U.S. at 778, 780 (citation modified). Forcing believers "to choose between the exercise of a First Amendment right and participation in an otherwise available public program" would likewise be a burden triggering strict scrutiny under RFRA. *See Thomas*, 450 U.S. at 716. Penalizing religious activity under a federal program "puts the same kind of burden" on free exercise "as would a fine imposed" on the exercise itself. *Sherbert*, 374 U.S. at 404. "Where the state … denies [an important] benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists." *Thomas*, 450 U.S. at 717–18.

Under RFRA's strict scrutiny framework, the federal government cannot "substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless it proves the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)–(b). This test is "exceptionally demanding." *Hobby Lobby*, 573 U.S. at 728. Any purported "compelling interest" must be "of the highest order." *Lukumi*, 508 U.S. at 546 (citation modified). The federal government also must prove that it has a compelling interest in applying its regulations to each particular entity—"'the particular claimant[s] whose sincere exercise of religion is being substantially burdened.'" *Hobby Lobby*, 573 U.S. at 726 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006)). "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541.

Federal officials must consider burdens on religious liberty when creating or enforcing programs, rather than wait for courts to hold that a religious-liberty violation has occurred. The APA, 5 U.S.C. § 706(1)(A), by requiring reasoned decision-making and precluding arbitrary and capricious action, requires agencies to "overtly consider" religious-liberty interests—and to tailor regulations or enforcement to avoid RFRA violations. *Little Sisters*, 591 U.S. at 682. As the Supreme Court has held, if officials know about potential religious-liberty conflicts, but do "not look to RFRA's requirements or discuss RFRA at all when formulating their solution, they would certainly be susceptible to claims that the rules were arbitrary and capricious for failing to consider an important aspect of the problem." *Id*.

In sum, under RFRA the government must satisfy strict scrutiny if it excludes religious believers or activities from federal programs. And as the next section shows, the Establishment Clause cannot justify such an exclusion.

D. The Establishment Clause does not require excluding religious believers or activities from federal programs.

The Supreme Court has repeatedly recognized that the Establishment Clause does not preclude religious institutions from participating in generally available public programs. In *Zelman v. Simmons-Harris*, for instance, the Court held that the Establishment Clause does not prohibit faith-based schools from participating in publicly funded private school-choice programs. 536 U.S. 639, 653 (2002). In *Good News Club v. Milford Central School*, the Court likewise held that granting equal access to government facilities does not violate the Establishment Clause (and instead is required by the First Amendment's Free Speech Clause). 533 U.S. 98, 120 (2001).

Other cases have applied this principle to other public programs. *E.g.*, *Mitchell v. Helms*, 530 U.S. 793, 829, 833 (2000) (plurality opinion) (rejecting an Establishment-Clause challenge to giving parochial school access to a government aid program to lend equipment and educational materials for the implementation of "secular, neutral, and nonideological programs"); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 842 (1995) (requiring equal access to student activity fees to fund a student-run Christian campus newspaper); *Bowen v. Kendrick*, 487 U.S. 589, 616 (1988) (rejecting an Establishment-Clause challenge to a religious organization's participation in a government program to promote counseling on teenage sexuality).

The *Carson* trilogy removes any doubt: The Establishment Clause is not an obstacle to religious entities' participation in public benefits programs. In *Trinity Lutheran*, the Supreme Court held that the Establishment Clause does not require denying access to a direct grant program because the applicant is a church. 582 U.S. at 466. In *Espinoza*, the Court held that the Establishment Clause does not require eliminating a government program altogether in order to avoid funding religious institutions among other applicants. 591 U.S. at 473–74. And in *Carson*, the Court held that the Establishment Clause does not require discrimination based on religious use in public funding programs. 596 U.S. at 781.

In these cases, the Supreme Court emphasized that an "interest in separating church and state 'more fiercely' than the federal Constitution … 'cannot qualify as compelling' in the face of the infringement of free exercise." *Id.* at 781 (quoting *Espinoza*, 591 U.S. at 484, and *Trinity Lutheran*, 582 U.S. at 466). "A State's antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." *Id*. In other words, only an actual Establishment Clause violation could suffice to justify a free-exercise burden, and there was no such interest. *Id*. The Court thus made clear that the government has no compelling interest in promoting "stricter separation of church and state than the Federal Constitution requires." *Id*.

These precedents allow religious schools and institutions to boldly practice their faith without fear of being denied equal access to government programs. *Carson*, 596 U.S. at 781; *Espinoza*, 591 U.S. at 484–85; *Trinity Lutheran*, 582 U.S. at 466. A contrary rule excluding religious groups from generally available funding and benefit programs would put the Establishment Clause at war with itself, because that clause forbids "hostility to religion," *Rosenberger*, 515 U.S. at 846.

Notably, in recent rulings the Supreme Court has confirmed that an earlier precedent which seemed more hostile to religion is no longer good law. In the 1971 case of *Lemon v. Kurtzman*, the Court applied an overly strict reading of the Establishment Clause to strike down state programs that provided funding to

supplement the salaries of teachers giving instruction in secular subjects at private religious schools. 403 U.S. 602, 623. In so doing, the Court articulated the "*Lemon* test" which, among other things, required government actions to not have the principal or primary effect of advancing religion. *Id*. at 612–13. Applying *Lemon*, courts came to view as unlawful any government actions that a "reasonable observer" would consider an "endorsement" of religion. *See, e.g.*, *Cnty. of Allegheny v. American Civ. Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989); *id*. at 630 (O'Connor, J., concurring in part and concurring in judgment).

The Court has decided that *Lemon* and its progeny went too far. In *Kennedy*, the Supreme Court broadly "abandoned" the so-called *Lemon* test, as well as its "endorsement test offshoot." 597 U.S. 507, 534 (2022). Instead, the Court held, courts should evaluate the Establishment Clause by reference to historical practices and understandings, looking to "original meaning and history." *Id*. at 535–36. Absent coercion to engage in a religious exercise, government action that reflects historical practices should be constitutionally permissible, and coercion is not defined by whether or not a person is merely offended by a government act. *Id*. at 537–39. In *Kennedy*, for example, a school district fired a football coach for taking a moment to deliver a quiet personal prayer after high school football games—and the Court held that his firing was not required by the Establishment Clause. *Id*. at 539. "[N]o historically sound understanding of the Establishment Clause" requires "government to be hostile to religion in this way." *Id*. at 541 (citation modified).

Government neutrality also raises no Establishment Clause concerns. *Espinoza*, 591 U.S. at 474. For, "[i]f the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government." *Mitchell*, 530 U.S. at 809. In other words, the "government itself is not thought responsible" for any particular program participant's actions or teachings if it funds a "broad range" of participants on religiously neutral terms. *Id*. at 809–10.

The Supreme Court has narrowed another case concerning funding of religious activities, *Locke v. Davey*, 540 U.S. 712 (2004). In *Locke*, the Court held that Washington did not violate the Free Exercise Clause by forbidding college scholarship recipients from using public funds to pursue ministerial studies. *Id*. at 715. This prohibition had been held permissible because of the "State's antiestablishment interests," *id*. at 722, even though funding these degrees would not actually be a federal Establishment Clause violation, *id*. at 712–19. But in *Trinity Lutheran*, the Court said that *Locke* was narrowly limited to the "religious training of clergy." 582 U.S. at 457, 464–65. *Locke* cannot be used to permit the government to exclude religious organizations from generally available public benefits that have no support in history or tradition comparable to restrictions on funding clergy. *Id*. at 457, 465–66; *see also Espinoza*, 591 U.S. at 479–83 (same).

In *Carson*, the Court said again that *Locke* recognized only a "narrow" antiestablishment interest that could not be extended "beyond . . . 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." 596 U.S. at 789. Arguably, *Locke* has been superseded by the *Carson* trilogy, if the Supreme Court has not yet explicitly recognized that effect. In any event, *Locke* does not hold that the Establishment Clause *requires* excluding religious organizations from public programs, but only that exclusion might be allowable in narrow circumstances. *Locke*, 540 U.S. at 719. *Locke* thus poses no obstacle to USDA including religious entities in its programs alongside other applicants.

In sum, under modern Supreme Court corrections to Establishment Clause precedent, religious groups may participate in generally available public benefits and programs, and there is no obstacle to those funds applying to religious activities and uses.

II. USDA Rural Development programs.

Certain USDA regulations governing Rural Development (RD) loan programs are inconsistent with these precedents and should be repealed. The Department's Rural Development agency (USDA RD) was established in 1994 with the purpose of "helping improve the economy and quality of life in rural America."[1] The agency offers loans, loan guarantees, and grants directed toward supporting essential services and economic development in rural areas. Its programs range from single-home rehabilitation to community gardens to multi-million-dollar utility installations. The agency also offers educational programs that provide technical assistance to budding food cooperatives and agricultural producers. In 2022, USDA RD wrote $31.3 billion in loans and grants and managed an active portfolio of 1.2 million loans totaling $231.6 billion.[2] USDA RD executes its mission through three sub-agencies, each with a unique focus: Rural Business—Cooperative Service, Rural Utilities Service, and Rural Housing Service. *Id.* at 45.

A. Rural Business—Cooperative Services

The Rural Business—Cooperative Services (RBCS) arm of USDA RD seeks to increase economic opportunity for Americans living in rural areas.[3] RBCS partners with both public and private nonprofit organizations to strengthen agricultural

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[1] USDA Rural Development, About RD, https://www.rd.usda.gov/about-rd.
[2] United States Department Of Agriculture, Budget Summary Fy 2024, 54 (2025), https://www.usda.gov/sites/default/files/documents/2024-usda-budget-summary.pdf.
[3] USDA Explanatory Notes, Rural Business—Cooperative Service, 3 (2024), https://www.usda.gov/sites/default/files/documents/33-2024-RBS.pdf.

businesses through loans and grants. This service also houses all of USDA's food co-op programs aimed at developing healthy food sources in market gaps. RBCS offers a wide range of energy programs to help communities develop more cost-effective and sustainable energy consumption and production.

RBCS runs several programs important to this petition for rulemaking, including the Business & Industry Loan Guarantee Program (B&I), the Rural Energy for America Program (REAP), and the Rural Microentrepreneur Assistance Program (RMAP). The B&I program guarantees loans made by private lenders to strengthen rural businesses, improve economic development, and create or preserve rural jobs. REAP provides grants and loan guarantees to agricultural producers and rural small businesses to support renewable energy systems and energy-efficiency improvements. RMAP provides loan capital and technical-assistance grants to intermediary micro-lenders so they can make microloans and deliver training to very small rural businesses. Nonprofit organizations qualify for B&I loans.

B. Rural Housing Service

The Rural Housing Service (RHS) carries out its goal of strengthening rural communities through improving housing and community-use facilities.[4] RHS accomplishes its mission by making grants and loans to individuals, private nonprofit organizations, federally recognized tribes, and public entities (like towns and cities).[5] RHS supports the development of both single family and multi-family housing by offering loans and grants to individuals as well as organizations.[6] Its housing programs include funding for low-income recipients and victims of natural disasters.[7] And, true to its agricultural mission, RHS offers loans and grants to build affordable on- and off-farm housing for "very-low to moderate income domestic, migrant, and seasonal farm laborers."[8]

USDA's housing programs can be transformative. For example, in 2024, with the help of his pastor, 84-year-old Joe Lewis applied for a grant from USDA RD to

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[4] USDA Rural Development, About Rural Housing Service, https://www.rd.usda.gov/about-rd/agencies/rural-housing-service.
[5] USDA Rural Development, Community Facilities Programs, https://www.rd.usda.gov/programs-services/community-facilities.
[6] USDA Rural Development, Multifamily Housing Programs, https://www.rd.usda.gov/programs-services/multi-family-housing-programs.
[7] USDA Fact Sheet, Single Family Housing, Rural Disaster Home Repair Grants, 1 (2025), https://www.rd.usda.gov/media/file/download/usda-rd-fs-sfh-rural-disaster-home-repair-grant.pdf.
[8] USDA Fact Sheet, On-Farm Labor Housing Loans (2024), https://www.rd.usda.gov/media/file/download/04-farm-labor-housing-loans.pdf.

rebuild his home.[9] Mr. Lewis' home had been partially destroyed by Hurricane Katrina and then decayed in the ensuing 20 years. Through USDA RD's low-income home repair program, the agency provided enough funds to completely rebuild Mr. Lewis' residence. In a video prepared and posted by the official USDA RD YouTube page, Mr. Lewis states he and his pastor prayed and blessed the house. The video emphasizes Mr. Lewis' closing statement with an on-screen quote in bold lettering: "This is a house of God."

The RHS also operates the Community Facilities Program (CF), which facilitates public improvements necessary for "the beneficial and orderly development of a community."[10] The purpose of this program is to supplement public functions which, but for a region's rural characteristics, would typically be provided by a public entity. *Id.* Nonprofit corporations qualify for CF loans. CF operations are divided into four buckets: healthcare, community support, education, and local food systems. This program funds a wide array of facilities including nursing homes, substance abuse clinics, childcare centers, homeless shelters, community centers, schools, vocational and technical schools, libraries, food pantries, and community kitchens.[11]

C. Rural Utilities Service

USDA's Rural Utilities Service (RUS) focuses on the critical need for core infrastructure in rural America. Taking a three-pronged approach, RUS offers loan and grant opportunities in electric, telecommunications, and environmental programs.[12] The service comes alongside utility companies who are already serving rural communities and provides them with guaranteed financing to expand and improve the rural electrical grid. RUS also invites homeowners to apply for grants to reduce their individual electricity consumption.[13] RUS also provides a suite of programs to improve telecommunications and remote services in rural areas. These activities include grants for classic broadband expansion, distance learning and

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[9] USDA RURAL DEVELOPMENT, From Devastation to Renewal: The Journey of Mr. Joe Lewis (YouTube, July 24, at 11:24 ET), https://www.youtube.com/watch?v=Qv_XhXs0rPA.
[10] Congressional Research Service, Rural Community Facilities: A Guide To Programs, 1 (2025), https://www.congress.gov/crs_external_products/R/PDF/R48462/R48462.2.pdf.
[11] USDA Rural Development, Community Facilities Programs, https://www.rd.usda.gov/programs-services/community-facilities.
[12] USDA Rural Development, About Rural Utilities Service, https://www.rd.usda.gov/about-rd/agencies/rural-utilities-service.
[13] USDA Rural Development, High Energy Cost Grants, https://www.rd.usda.gov/programs-services/electric-programs/high-energy-cost-grants.

telemedicine, as well as loan guarantees for the maintenance of existing telecom services.[14]

RUS also offers a variety of programs to build and support safe drinking water and sanitary waste disposal systems in rural communities. Its Water and Environmental Program (WEP) delivers financing and technical expertise to isolated and especially impoverished communities around the nation.[15] In addition to general projects, WEP offers targeted grants and loans to groups like farm laborers and Native Alaskan villages.[16] WEP's programs include the Water & Waste Disposal Loan & Grant Program (WWD). Nonprofit organizations are eligible for WWD loans.

III. USDA regulations illegally exclude religious activities, entities, and facilities from B&I, CF, and WWD programs.

Current USDA regulations exclude religious activities, entities, and facilities from rural development loan programs that are otherwise available to secular organizations. 7 C.F.R. §§ 5001.115(r), 4280.323(k), and 4279.117(i). These restrictions are inconsistent with religious freedom protections, and they substantially burden religious exercise without a compelling justification.

A. USDA regulations include three types of exclusions targeting religious entities and activities.

In 7 C.F.R. §§ 5001.115(r) (applying to B&I, CF, WWD, and REAP), 4280.323(k) (applying to RMAP), and 4279.117(i) (applying to B&I funding under the CARES Act) include three categories of restrictions on the use of USDA funds: prohibitions against (1) support for explicitly religious activities; (2) financing buildings used for inherently religious activities; and (3) the use of USDA funds to improve a principal place of worship. The Department should repeal these exclusions.

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[14] USDA Rural Development, Distance Learning & Telemedicine Grants, https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.
[15] USDA Rural Development, Water and Environmental Programs, https://www.rd.usda.gov/programs-services/water-environmental-programs.
[16] USDA Fact Sheet, Grants For Rural And Native Alaskan Villages (2022), https://www.rd.usda.gov/media/file/download/508-rd-fs-rus-grantsruralnativealaskanvillages.pdf-0.

1. Religious activities

USDA regulations bar recipients from using funding to support religious activities. Under this category of restriction, a religious organization must isolate any projects or services directly supported by USDA from its religious activities.

Section 5001.115(r) prohibits projects supporting "inherently religious activities," including "worship, religious instruction, [and] proselytization." No USDA support may go to inherently religious activities, and "[i]f an organization conducts religious activities, they must be offered separately, in time, or location from programs or services supported with the guaranteed loan." *Id*. Section 4280.323(k) prohibits loans "supporting explicitly religious activities, such as worship, religious instruction or proselytization." Section 4279.117(i) likewise prohibits guarantees "supporting inherently religious activities, such as worship, religious instruction, proselytization."

2. Buildings and structures where religious activities occur

Sections 5001.115(r) and 4279.117(i) forbid financing buildings used for inherently religious activities, even if other activities occur at the facilities. Section 5001.115(r) prohibits USDA funds to be used to "pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted." Section 4279.117(i) likewise says that USDA may not "pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted."

3. Places of worship

Section 5001.115(r) totally prohibits the use of funds in a room used as "a principal place of worship." Under that section, "[s]anctuaries, chapels, or other rooms that are used as a principal place of worship are ineligible for guaranteed financing under this part." *Id*.

B. The Biden Administration's USDA intensified its restriction of religious uses in RD regulations.

In 2024, USDA amended its rules to exacerbate the religious targeting found in § 5001.115(r). The history behind that change helps demonstrate the rule's hostility towards religious applicants.

Previously, in 2012, ADF had successfully represented a Vermont pregnancy center which was denied a USDA loan.[17] Care Net had applied for a loan through USDA RD to acquire and renovate a building in Brattleboro, Vermont. Care Net informed USDA that it would provide voluntary Bible studies in one of its classrooms when the room is not being used for other purposes. The Hearing Officer denied Care Net's request after USDA's General Counsel concluded that the use raised "significant Constitutional issues." The Appeals Division applied what was, at the time, the arguably applicable legal test for Establishment Clause violations: the "*Lemon* Test."[18]

After Care Net filed suit in federal court, a district court judge overturned that decision as improperly reasoned and remanded the case to USDA's National Appeals Division. *Id.* On remand, the Appeals Division also applied the *Lemon* test. It considered whether (1) the organization would distribute government funds and services neutrally, and (2) whether the program had the primary effect of advancing religion. Under this test, if the program is neutral and will not have the primary effect of advancing religion, the use of funds should be approved. *Id.* at 117. The Appeals Division ruled in Care Net's favor, concluding that "appellant [was] not seeking government funds to subsidize religious education or instruction; rather, it [sought] a government loan for capital improvements to a building."[19] USDA then settled the lawsuit with Care Net and allowed it to proceed with the project as proposed.

In 2024, the Biden administration moved to change the rule—not to repeal the religious exclusion but to broaden it. USDA changed the rule to more clearly exclude entities like Care Net from USDA funded projects. It amended § 5001.115(r) to add language specifically prohibiting funding for "[s]anctuaries, chapels, or other rooms that are used as a principal place of worship."[20] That tightened restrictions so that future religious applicants in the same position as Care Net would be denied.

In this respect the Biden administration USDA rejected the reasoning of its own Appeals Division from 2013. Although even the *Lemon* test favored Care Net, and the Supreme Court had since jettisoned that test rendering Establishment

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[17] Alliance Defending Freedom, *USDA Loss Leads to Winning Settlement for Vt. Pregnancy Center* (Sep 23, 2013), https://adflegal.org/press-release/usda-loss-leads-winning-settlement-vt-pregnancy-center/.
[18] *See Care Net Pregnancy Center of Windham Cnty. v. U.S. Dept. of Agriculture*, 896 F. Supp. 2d 98, 105 (D.D.C. 2012).
[19] *X v. Rural Development*, No. 2011E000691, § 5 (USDA Nat'l. App. Division, Jun 14, 2013).
[20] OneRD Guarantee Loan, 89 Fed. Reg. 79,698, 79,699, 79712 (Sept. 30, 2024) (codified at 7 C.F.R. § 5001.115(r)).

Clause concerns even less weighty, the 2024 rule is even more exclusionary of entities like Care Net. This targeting of religious organizations and activities should itself be overturned by repealing § 5001.115(r).

C. These exclusions substantially burden the exercise of religion.

These restrictions place substantial obstacles in the path of organizations and individuals who desire to partner with USDA but engage in religious activities or allow religious exercise in their facilities. These restrictions don't just impact faith-based and nonprofit organizations; they withhold funds from public and private secular facilities. Indeed, the restrictions burden some of the communities USDA specifically targets for aid, like remote Alaskan villages and low-income farm workers. Similarly, businesses are legally allowed to exercise religion. *See generally Hobby Lobby*, 573 U.S. 682. Yet religiously run or oriented businesses, or those that allow religious activities in their facilities, could be excluded from these government programs.

Several examples of the burdens on religious exercise flowing from these restrictions are worth highlighting.

1. The religious exclusions burden free exercise in unconventional worship settings and traditions.

In various settings, prohibitions on funding religious activities place unique burdens on religious organizations.

i. Churches worshiping in multi-use rooms

Many churches hold their primary congregational services in whatever room happens to be the largest in the building, often a gymnasium or cafeteria. Other churches that do not own their own buildings rent or lease space from other entities as their principal places of worship. Section 5001.115(r) could bar a church that holds its principal worship service in a room designed for multiple uses from using any loan or grant funds to improve that multi-use space. Likewise an organization that seeks USDA's assistance in improving such a space could be excluded by § 5001.115(r)'s "principal place of worship" prohibition.

Under the multi-use facilities restriction, the fact that applicants engage in "inherently religious activities" could disqualify the project from USDA support. As the Biden administration's 2024 rule exacerbating this harm acknowledged, "[this rule] is updated to provide additional information to religious organizations on items that may cause their project *to be deemed ineligible*." OneRD Guarantee Loan, 89 Fed. Reg. at 79699 (emphasis added).

Rooms that host worship can be valuable assets for rural communities in ways consistent with USDA RD's mission to serve rural Americans. In a real-life example, the 31st Street Baptist Church in Richmond, Virginia developed a large community garden on its church property and distributed fresh produce to the surrounding community via its nutrition center.[21] This project illustrates how USDA programs can join purpose with the mission of a church seeking to serve its local community. But if 31st Street Baptist lacked the luxury of space and thus needed to operate its nutrition center in the same room as Sunday worship, its beneficial work could have been barred from USDA's programs.

ii. Public facilities available for religious use

Across the country, many faith communities hold their principal worship services in public facilities. Even the U.S. Capitol served as a principal place of worship for residents of Washington D.C. from the nation's founding until well after the Civil War.[22] Today, especially in rural areas, a congregation with insufficient membership or funds to build its own facility will often rent space at a local public school.[23] And the Supreme Court has long recognized that this does not violate the Establishment Clause. *Good News Club v. Milford Central School*, 533 U.S. 98, 119–120 (2001).

But the text of § 5001.115(r) threatens this widespread practice. The existing regulation prohibits the use of any USDA RD funds in a room that is a principal place of worship. § 5001.115(r) ("Sanctuaries, chapels, or other rooms that are used *as a* principal place of worship are ineligible for guaranteed financing under this part."). Thus, an applicant that is a public entity could logically expect USDA to deny them funding if they rent the facility for religious uses. And in response to that fear, schools could refuse to rent space to churches—a burden on religious exercise that can easily be removed by repealing § 5001.115(r). Public schools and other government facilities should not have to choose between USDA funding and mutually beneficial rental relationships with churches.

iii. Private secular facility available for religious use

Under these regulations, secular facilities that are otherwise eligible to receive and distribute USDA RD funds could be rendered ineligible if they allow

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[21] USDA Blog, *Urban Gardening Ministry Brings Fresh Food to Richmond, VA* (May 24, 2011), https://www.usda.gov/about-usda/news/blog/urban-gardening-ministry-brings-fresh-food-richmond-va.
[22] *See* Wallbuilders, *Church in the U.S. Capitol* (May 29, 2023), https://wallbuilders.com/resource/church-in-the-u-s-capitol/.
[23] *See, e.g.*, The Original Pentecostals, Service Times, https://theoriginalpentecostals.com/#service-times.

their facility to be used for religious purposes. For example, in 2001, the YMCA in Keene, New Hampshire received $9 million in USDA Community Facilities Direct Loan funds to double the size of its multi-use facility to 41,700 square feet.[24] The YMCA has historically allowed churches to rent its facilities for services. In fact, there is an organization called The City Movement that was founded to establish a "church planted in every single [YMCA]."[25] Even if the exclusions can be applied narrowly by USDA, concerns about USDA RD eligibility could cause private facilities to refuse access for religious uses—decreasing options and interfering with mutually beneficial relationships. An organization like the YMCA should not have to choose between USDA funding and its tradition of opening its facilities for worship services.

In another instance, USDA awarded CF funds to convert a historical church into a museum.[26] USDA RD granted $50,000 to renovate and preserve the 130-year-old Catholic church in Nebraska. Although deconsecrated as an official parish of the Catholic church, St. John's Church is still used for an annual remembrance ceremony for lost loved ones and a place for prayer and reflection.[27] With USDA CF funds, the local historical society restored the stained-glass windows, paintings, and statues in the church. Yet the same loan to restore the same church if it were in operation as a principal place of worship—even if it had other uses—would be excluded under § 5001.115(r), even though it would achieve exactly the same goals of the program.

Consider, too, the possibility that chapels at hospitals or airports could implicate regulations excluding worship uses. And existing regulations could burden religious exercise where the owner of a multi-family housing facility allows communal space to be used for religious services. If USDA concluded that these activities converted the room into a "principal place of worship," it could jeopardize eligibility under § 5001.115(r).

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[24] U.S. DEPARTMENT OF AGRICULTURE BLOG, *A USDA Community Facilities Direct Loan Helps Build a New YMCA Building in New Hampshire* (Jan 3, 2011), https://www.usda.gov/about-usda/news/blog/usda-community-facilities-direct-loan-helps-build-new-ymca-building-new-hampshire.
[25] The City Movement, https://thecitymovement.com/.
[26] U.S. DEPARTMENT OF AGRICULTURE BLOG, *A Treasure to be Remembered: USDA Support Turns a Historic Church into a Museum* (Jun 4, 2013), https://www.usda.gov/about-usda/news/blog/treasure-be-remembered-usda-support-turns-historic-church-museum.
[27] Table Rock Historical Society, The Museum of St. John's Catholic Church, https://www.tablerockhistoricalsociety.com/st-johns-catholic-church.html.

iv. One-room churches

Thousands of American churches consist of just a single room. Whether one of the traditional one-room churches dotting the Midwestern countryside or the storefront church in a small-town strip mall, these could be excluded from USDA RD loans under § 5001.115(r). Each week, these small churches devotedly transform their space for a wide range of uses—it goes from classroom to mid-week soup kitchen to donation-drive headquarters, then back to church sanctuary on Sunday morning. But since this room is the church's principal place of worship, it runs the risk of being excluded from USDA RD funding.

v. House churches

By some estimates, between 4 million and 18 million Americans worship at a house church.[28] A 2006 Barna report found that 9% of adults surveyed in the U.S. attended a house church during a typical week.[29] In rural locations without a church, it is also possible that a family could designate a room in their home as the chapel for a traveling minister to use to celebrate worship services.

Often, house churches exist somewhere between a formal 501(c)(3) nonprofit and an informal gathering of fellow adherents. One example is the Wright Farm House Church in rural Lacey's Spring, Alabama.[30] This is a group of people who meet regularly to read the Bible together and observe Christian congregational traditions. As a church, these people seek no governmental recognition or special tax or legal status. But if the family that owns the home were to apply to USDA for a Single Family Housing Direct Loan or to build a community garden through the Community Facilities Program, their participation in this "religious organization" (in the loosest sense) might seriously compromise their application.

2. USDA RD programs assist populations more likely to have unconventional religious facilities.

i. Alaskan villages

For many years, USDA RD has provided grant funding to rural and Native Alaskan villages to help provide safe, reliable drinking water and waste disposal

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[28] Travis Kolder, *How Many Americans Are Part of House Church?*, Pursuing Glory (Sep. 12, 2009), https://traviskolder.com/2009/09/12/how-many-americans-are-part-of-house-churches/.
[29] House Church Involvement Is Growing, Barna Research (Jul. 19, 2006), https://www.barna.com/research/house-church-involvement-is-growing/.
[30] Wright Farm House Church, https://wrightfarmhousechurch.com/.

systems for households and businesses.[31] These truly remote communities often lack the basic water infrastructure necessary to maintain a baseline of health and safety. Due to the rough terrain and rudimentary construction, many communities will use USDA RD funds to add public toilets, drinking water, and laundry facilities to an existing modern building, referred to as "washeterias." *Id.* at 4. Every year, the Christian ministry Samaritan's Purse builds a new church in a remote Alaskan village.[32] These modern buildings could serve as perfect locations to house washeterias, but they risk being deemed ineligible because of § 5001.115(r).

ii. Low-income farm laborers

USDA RD offers housing loans to develop or rehabilitate affordable rental housing for low-income, domestic, migrant, and seasonal farm laborers. Farmers, whether individually or as part of an association, may apply to USDA for this program to increase the supply of safe and sanitary housing for the millions of people who work on American farms.

Often, these farm laborers are unable to attend traditional religious services, so they make do by holding services in their homes and communal spaces. One housing facility in Yakima, Washington, houses 1,300 migrant farm laborers who are shuttled to nearby farms during the day and restricted to the grounds of the facility by night.[33] Though many are devoutly Catholic, their circumstances make it almost impossible for these laborers to attend Mass. So local priests and bishops travel to the housing facility to celebrate Mass and other religious sacraments. *Id.* Such a use of a migrant housing facility for a place of worship should not disqualify that facility from receiving USDA support, which would benefit the population USDA is tasked to serve.

IV. USDA's religious exclusions actively deter would-be participants.

These regulations discourage and exclude potential applications. They chill the religious exercise of applicants by forcing them to cease, minimize, or segregate their religious activities or to not apply altogether.

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[31] USDA RURAL DEVELOPMENT, RURAL ALASKA VILLAGE GRANT PROGRAM 2 (2016), https://www.govinfo.gov/content/pkg/GOVPUB-A114-PURL-gpo72527/pdf/GOVPUB-A114-PURL-gpo72527.pdf.
[32] Samaritan's Purse, *Building Churches in the Last Frontier* (Jan 23, 2025), https://ontheground.samaritanspurse.org/podcast/building-churches-in-the-last-frontier.
[33] Ann Hess, *Facing the Hard Realities, Pastoral Needs of Farmworkers*, OUR SUNDAY VISITOR (Sep 4, 2023), https://www.oursundayvisitor.com/facing-the-hard-realities-pastoral-needs-of-farmworkers/.

USDA regulations are incorporated into Notices of Funding Opportunities (NOFO), and applicants must promise compliance as a condition of submitting their application.[34] Recent notices of funding opportunities from USDA RD have prohibited a "faith-based organization" from using USDA funds to "support or engage in any explicitly religious activities." *Id.* Even though that provision expresses an exception when inconsistent with the First Amendment, *id.*, such language does not cure the problem inherent in USDA's regulations. The NOFO still requires applicants to agree to ensure compliance with USDA regulations, *id.*, placing the burden on a religious applicant to decide when and in what circumstances USDA might deem the First Amendment to override its regulations. Given USDA's 2024 regulatory change to exclude previous instances where entities like Care Net fought and overcame exclusions, at best that puts religious applicants in a precarious situation.

This causes an inevitable chilling effect. Religious applicants will be less likely to apply, thinking they cannot ensure compliance with USDA regulations. Religious applicants will feel pressure to choose between their religious activities and eligibility for funding, and secular applicants will feel pressure to exclude religious activities from their facilities so as not to trigger the regulatory exclusions.

This chilling effect could be particularly pronounced in rural populations for two reasons. First, religious leaders and their associates generally hold themselves to a high moral standard, and they are less likely to apply if a facial review of the regulations seems to disqualify churches or religious exercise. Second, many rural religious organizations simply cannot afford to mount a legal battle if a hearing officer enforces the exclusions to their detriment. Any organization that is faith-based or engages in (or allows) religious activities has every reason to be on high alert to the application of USDA's religiously exclusionary regulations.

BASIS FOR THE REQUESTED RULE

USDA should grant this petition and issue a proposed and then a final rulemaking to rescind 7 C.F.R. §§ 5001.115(r), 4280.323(k), and 4279.117(i) for three reasons. First, the regulations are contrary to the U.S. Constitution's Free Exercise Clause and violate RFRA. Second, President Trump's executive orders prioritize the rescission of regulations that fail to provide equal treatment to religious institutions. Third, USDA can—and should—protect religious liberty in its discretionary administration of these programs.

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[34] *See, e.g.*, Notice of Funding Opportunity for the Rural Community Development Initiative, 90 Fed. Reg. 30037, 30046 (Jul. 8, 2025).

I. The regulations are unlawful.

Despite the recent *Carson* trilogy, the USDA programs described above continue to unconstitutionally restrict participation for faith-based organizations—limiting their equal participation through organizational eligibility and religious use restrictions. Singling out religious activities and facilities for special exclusion from USDA RD programs is not consistent with recent Supreme Court jurisprudence. There is no constitutional requirement that USDA maintain these exclusions, and there are many reasons to believe the First Amendment and RFRA do not allow USDA to continue to maintain or apply them.

Because many religious entities may not know their legal rights, and since the process of bringing court challenges to these regulations is time-consuming and expensive, it's likely that these regulations unnecessarily keep many religious organizations out of federal programs. And even in circumstances where the exclusions might not apply, the regulations likely cause religious organizations to needlessly subject themselves to rules restricting their religious exercise.

II. The regulations conflict with President Trump's executive orders.

ADF supports the President's executive orders that require federal agencies to remove burdensome regulations that violate religious liberty. President Trump's executive orders require federal agencies to include religious groups in public programs. ADF seeks to assist USDA in pursuing this goal.

A. President Trump's executive orders and memoranda prioritize rescinding regulations that burden religious believers' participation in federal programs.

President Trump has issued executive orders and memoranda targeting two forms of religious discrimination in federal programs. One executive order announced the President's policy "to protect the religious freedoms of Americans and end the anti-Christian weaponization of government."[35] Citing the Free Exercise Clause and RFRA, the President directed agencies to "ensure that any unlawful and improper conduct, policies, or practices that target Christians are identified, terminated, and rectified." *Id*. at 9365–66. As shown above, these three USDA regulations specifically target religion, and the Biden administration's amendment of § 5001.115(r) was nothing short of an "anti-Christian weaponization of government" in response to the Care Net case and similar circumstances.

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[35] Executive Order 14202, Eradicating Anti-Christian Bias, 90 Fed. Reg. 9365, 9365 (Feb. 12, 2025).

The President also issued a memorandum instructing agencies to rescind regulations that are unlawful under 10 recent landmark Supreme Court decisions—including *Carson* and *Roman Cath. Diocese of Brooklyn*.[36] As an accompanying fact sheet explained, after *Carson*, agencies "must review their regulations to ensure equal treatment of religious institutions vis-à-vis secular institutions for purposes of funding and access to public benefits."[37] And, the fact sheet explained, after *Roman Cath. Diocese of Brooklyn*, each "agency should review its regulations to ensure at least equal treatment of religious institutions vis-à-vis secular institutions for regulatory purposes." *Id.*

Another executive order announced the President's policy "to combat anti-Semitism vigorously."[38] Americans of all faiths, including Jewish communities, will benefit from repealing these anti-religious exclusions in USDA regulations.

President Trump further ordered federal agencies to remove unnecessary and burdensome regulations in general.[39] Because the "ever-expanding morass of complicated Federal regulation imposes massive costs on the lives of millions of Americans," and federal regulations "are often difficult for the average person or business to understand," the President ordered agencies to address these regulations and to secure "the highest possible quality of life for each citizen." *Id.*

As part of President Trump's deregulatory initiative, the President ordered agencies to prioritize rescinding unlawful regulations and regulations that undermine the national interest.[40] As that order explained, "[e]nding Federal overreach and restoring the constitutional separation of powers is a priority of my Administration." *Id.* President Trump specifically ordered agencies to rescind:

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[36] Presidential Memorandum, Directing the Repeal of Unlawful Regulations (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/.
[37] Fact Sheet: President Donald J. Trump Directs Repeal of Regulations That Are Unlawful Under 10 Recent Supreme Court Decisions (Apr. 9, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-directs-repeal-of-regulations-that-are-unlawful-under-10-recent-supreme-court-decisions/.
[38] Executive Order 14188, Additional Measures To Combat Anti-Semitism, 90 Fed. Reg. 8847, 8847 (Feb. 3, 2025).
[39] Executive Order 14192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065, 9065 (Jan. 31, 2025).
[40] Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," 90 Fed. Reg. 10583, 10583 (Feb. 19, 2025).

(i) unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;

(ii) regulations that are based on unlawful delegations of legislative power;

(iii) regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;

(iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;

(v) regulations that impose significant costs upon private parties that are not outweighed by public benefits;

(vi) regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and

(vii) regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.

Id. As this list shows, the President's deregulatory agenda is not merely about economic burdens, although those are extremely important.

Finally, "for each new regulation issued, at least 10 prior regulations [must] be identified for elimination." Executive Order 14192, 90 Fed. Reg. at 9065. USDA's rescission of these three rules will help the agency reach that goal.

B. USDA should rescind its regulations that burden religious believers in agriculture programs.

Regulations that burden religious believers in rural development programs are a perfect example of harmful regulations that should be repealed under the President's agenda. Burdens on religious exercise are no less significant a burden, and no less part of the President's deregulatory agenda, than economic burdens imposed on industry and small businesses.

Under the "Directing the Repeal of Unlawful Regulations" Presidential Memorandum, agencies must prioritize removing regulations that violate *Carson* and *Roman Catholic Diocese of Brooklyn*. Agencies should thus remove any regulations that do not provide equal treatment of religious institutions vis-à-vis

secular institutions (1) for purposes of funding and access to public benefits, and (2) for regulatory purposes. The regulations discussed above do both by targeting religious character and activities.

In addition, these regulations are burdensome because they create harms that the President has independently targeted for removal in Executive Order 14219, 90 Fed. Reg. at 10583. Not only are the regulations unconstitutional and unlawful, they "impose significant costs upon private parties that are not outweighed by public benefits," "harm the national interest by significantly and unjustifiably impeding … infrastructure development, disaster response … economic development, [and] land use," and "impose undue burdens on small business and impede private enterprise and entrepreneurship." *Id.*

There is no public benefit to excluding religious groups from equal treatment in public programs. Excluding believers from USDA RD programs hurts the national interest by limiting the reach of programs that aim to help infrastructure development, disaster response, economic development, and land use for religious believers and religious communities. And excluding religious believers from equal treatment in these programs unduly burdens religious organizations and small businesses and impedes religious citizens' private enterprise and entrepreneurship.

Finally, USDA may rescind these regulations without creating any new replacement regulations. Indeed, these rescissions will help USDA implement other needed regulations, as these three rescissions count under the 10-for-1 deregulatory initiative under Executive Order 14192. In this case, no new regulatory text is needed—the problem is solved by simply rescinding three existing provisions—making this rule a quantitative subtraction of three rules. And since the language being rescinded itself imposes a regulatory burden, its rescission is substantively deregulatory (in addition to being numerically deregulatory). So rescinding these rules advances the President's deregulatory goals.

III. USDA can and should protect religious liberty.

We strongly support Secretary Rollins's statement outlining USDA's pledge to uphold and protect the First Amendment in USDA programs and services.[41] She stated that "First Amendment protections are retained by Americans of faith when they participate in government programs whether as a recipient of federal benefits or a partner in providing services to the public." *Id*. at 1.

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[41] Statement on Upholding Religious Liberties in Public Engagement, Secretary of the USDA, Aug. 5, 2025, https://www.usda.gov/sites/default/files/documents/statement-upholding-religious-liberties-public-engagements.pdf.

The Secretary further clarified that religious organizations may participate in USDA programs under the "same terms as secular organizations" and she forbade the Department from "unduly burden[ing] religious exercise of [faith-based organizations]." *Id*. at 3. For example, the agency cannot restrict religious organizations from "providing informational materials" if secular organizations are not similarly prohibited. *Id*. at 3.

The Secretary also highlighted a comprehensive effort to "uphold[ ] religious liberties in accordance with current law and constitutional interpretation" by tasking the USDA Center for Faith and the Office of General Counsel to conduct a comprehensive review of USDA regulations and policies. *Id*. at 2.

We respectfully submit this petition to aid Secretary Rollins in reaching these goals. Protecting religious liberty in the way proposed in this petition is fully within USDA's power. Nothing requires USDA to maintain these rules, and the agency has discretion to rescind them to steer clear of any possible religious-liberty violations. The requested rulemaking will guard against litigation from religious applicants, and it will be appropriately solicitous of religion among citizens seeking development assistance.

Because USDA can accommodate religious believers in these programs, USDA can and should implement the President's and Secretary Rollins's policy by rescinding these burdensome regulations that target religion.

CONCLUSION

USDA should initiate rulemaking to rescind 7 C.F.R. §§ 5001.115(r), 4280.323(k), and 4279.117(i). Doing so will help ensure that RD programs do not discriminate against religious entities because of their religious character or against religious activities. We appreciate the administration's commitment to protecting religious liberty, and we thank USDA for its consideration of these important questions. Please let us know if you have any questions or wish to discuss this matter further.

Respectfully submitted,

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