March 27, 2026

Harold Henderson
Paperwork Reduction Act Official
Office of the Secretary/Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201
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RE: OMB Control Number 0945-0008 / Assurance of Compliance, Form HHS-690

Dear Mr. Henderson:

On behalf of the undersigned organizations, we write to comment on an information collection request published in the Federal Register on January 26, 2026.[1] The notice requests comments on changes to Form HHS-690, an Assurance of Compliance that all applicants—including states—for federal contracts, grants, or other federal financial assistance must sign.

We have grave concerns about the changes to Form HHS-690 as well as the lack of process afforded to the public.

Changes to Form HHS-690 Are Troubling

Section 1557

The agency changes Paragraph 5 of Form HHS-690 so that it no longer states expressly that the prohibition of discrimination on the basis of sex under Section 1557 of the Affordable Care Act includes discrimination on the basis of pregnancy, sexual orientation, and gender identity. These changes are unwarranted, unjustified, and harmful. They would sow confusion and lead to unlawful discrimination in violation of the statute for which the form seeks to require compliance.

The agency's supplemental materials rely on *Texas v. Becerra* to justify the changes, suggesting that an August 2024 order[2] in the case imposed a nationwide stay on enforcement of Section 1557's prohibition on sex discrimination with respect to "sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity; and sex stereotypes." This claim, however, dramatically misrepresents the court's decision. In fact, the order—issued in response to the federal government's own motion for reconsideration—specifically limited the scope of the stay and made clear that it did not require the wholesale revision of the definition of sex discrimination or the removal of any protected basis under Section 1557.[3] The court did not address Section 1557's application to discrimination on the basis of sex characteristics, pregnancy or related conditions, sexual orientation, and sex stereotypes.[4] Moreover, the agency fails to engage with the numerous federal court decisions holding that Section 1557's prohibition of

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[1] 91 Fed. Reg. 3205 (Jan. 26, 2026).
[2] *Texas v. Becerra*, No. 6:24–CV–211–JDK, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024).
[3] *See id.* at *2.
[4] *See id.* ("For the reasons explained above, a §705 stay should apply nationwide *but only as to the portions of the Final Rule challenged here.* Accordingly, the Court modifies its previous order (Docket No. 18) and ORDERS that the effective date of the May 6, 2024 Final Rule, Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 is STAYED nationwide as to only the following sections: 42 C.F.R. §§ 438.3(d)(4), 438.206(c)(2), 440.262, 460.98(b)(3), 460.112(a); 45 C.F.R. §§ 92.101(a)(2) (and all references to this subsection), 92.206(b), 92.207(b)(3)-(5).") (emphasis added).

discrimination on the basis of sex extends to discrimination on the basis of gender identity.[5] The agency's reliance on *Texas v. Becerra* to justify these revisions to Form HHS-690 cherry-picks case law, overstates the scope of that case law, and is wholly unfounded.

The agency's removal of the reference to pregnancy is also contrary to the clear consensus that pregnancy-based discrimination is a form of sex discrimination under Title IX of the Education Amendments of 1972 (codified at 20 U.S.C. § 1681 *et seq.*). Section 1557 prohibits discrimination in health care on the same grounds as are prohibited in education under Title IX, and Title IX's longstanding regulations are explicit that discrimination on the basis of sex includes discrimination on the basis of pregnancy.[6] Decades of case law draws the same conclusion.[7] The agency itself acknowledges Title IX's application to pregnancy: Paragraph 3 of the revised form includes pregnancy in the definition of sex for purposes of discrimination under Title IX. The form's omission of pregnancy in the definition of sex under Section 1557 is therefore internally inconsistent and legally incorrect.[8]

Nor is this agency action warranted by Executive Order 14168. The executive order does not supply independent authority to depart from the governing statutes. Thus, the changes to the form are not required by the *Texas v. Becerra* decision or the executive order, as the agency states.

Title IX

The agency also changes Paragraph 3 of Form HHS-690 to no longer say that the prohibition of discrimination on the basis of sex under Title IX includes sexual orientation and gender identity. These changes are similarly unwarranted, unjustified, and harmful, and will leave recipients of federal financial assistance—especially local education agencies and institutions of higher education—confused and without the clarity needed to effectively root out the many ways that sex-based discrimination occurs in education settings.

The agency bases these changes on Executive Order 14168, a radical and discriminatory order that has been resoundingly rejected by the same women's rights and gender justice organizations

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[5] *See, e.g.*, *Hammons v. Univ. of Md. Med. Sys. Corp.*, 649 F. Supp. 3d 104, 115-16 (D. Md. 2023); *Scott v. St. Louis Univ. Hosp.*, 600 F. Supp. 3d 956, 965 (E.D. Mo. 2022); *Joganik v. E. Tex. Med. Ctr.*, No. 6:19-CV-517-JCB-KNM, 2021 WL 6694455, at *10 (E.D. Tex. Dec. 14, 2021).

[6] 42 U.S.C. § 18116(a); 34 C.F.R. § 106.40. For five decades, the regulations implementing Title IX have prohibited sex discrimination on the basis of "pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom." Dep't of Health, Educ., and Welfare, Gen. Admin., 40 Fed. Reg. 24,128, 24,135, 24,140, 24,142 (June 4, 1975), codified at 45 C.F.R. pt. 86. Upon its creation in 1979, the Department of Education adopted the Title IX regulations originally promulgated by the Department of Health, Education, and Welfare unchanged in relevant part. *See* 45 Fed. Reg. 30,955 (May 9, 1980), codified at 34 C.F.R. § 106.40.

[7] *See Conley v. Nw. Fla. State Coll.*, 145 F. Supp. 3d 1073, 1076-79 (N.D. Fla. 2015) (upholding the Title IX regulations because, "[i]n light of the legislative history of Title IX, the broad sweep of its language, and the fact that the term 'sex' is understood in common usage to encompass pregnancy . . . Congress's prohibition of discrimination 'on the basis of sex' unambiguously includes pregnancy-based discrimination within its purview"). *See also Pfeiffer v. Marion Ctr. Area Sch. Dist.*, 917 F.2d 779, 784 (3d Cir. 1990), abrogated by *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009) (Title IX regulations "specifically apply its prohibition against gender discrimination to discrimination on the basis of pregnancy"); *Hogan v. Ogden*, No. 06-CV-5078, 2008 WL 2954245, at *9 & n.11, 13 (E.D. Wash. July 30, 2008) (same); *Chipman v. Grant Cnty. Sch. Dist.*, 30 F. Supp. 2d 975, 977-78 (E.D. Ky. 1998) (same); *Hall v. Lee Coll.*, 932 F. Supp. 1027, 1033 n.1 (E.D. Tenn. 1996) (same); *Cazares v. Barber*, No. 90-CV-0128, slip op. (D. Ariz. May 31, 1990); *Wort v. Vierling*, No. 82-3169, slip op. (C.D. Ill. Sept. 4, 1984), aff'd, 778 F.2d 1233 (7th Cir. 1985).

[8] *See Pritchard v. Blue Cross Blue Shield of Ill.*, 159 F.4th 646, 670 (9th Cir. 2025) (because Title IX's protections are consistent with those of Title VII, "Section 1557 bars discrimination against treatment for pregnancy and childbirth").

that have championed Title IX for decades[9] and that is, itself, the basis of multiple legal challenges.[10] But as explained above, a "decision supported by no reasoning whatsoever in the record cannot be saved merely because it involves an Executive Order."[11]

Moreover, the agency's decision and message are inconsistent with Title IX. Decades ago, Congress passed Title IX with expansive language to fulfill its broad mandate of eradicating sex discrimination in education. The Supreme Court has confirmed that scope, stating that there is "no doubt that 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.'"[12] Indeed, multiple federal appellate courts have held that Title IX's broad mandate proscribes discrimination based on sexual orientation or gender identity.[13] These decisions were reached both before and after the U.S. Supreme Court's decision in *Bostock v. Clayton County*, which found that, in the context of Title VII, "homosexuality and transgender status are inextricably bound up with sex."[14]

Aside from having no legal basis for this change, the agency provides no further justification for this exclusion, even though it is well aware that LGBTQIA+ students are disproportionately impacted by discriminatory conduct in school settings. HHS's own data finds that LGBTQIA+ students are 81% more likely than their straight and cisgender peers to be bullied at school, which contributes to significant mental health disparities.[15] Alarmingly, 62% of LGBTQIA+ students who faced violence in school never report the incident to school staff, in part because students do not understand that schools may have to respond to complaints of harassment or discrimination.[16] The agency's explicit removal of enumerated protected bases from Form HHS-690—purportedly justified by an executive order steeped in animus—signals that schools need not prioritize claims of sex discrimination rooted in sexual orientation and gender identity. This abdication also exposes schools to legal liability if they disregard their Title IX obligations in reliance on the HHS's misleading claims.

"Conscience Protection" Statutes

Form HHS-690 explicitly requires federal funding applicants to certify that they will comply with the "Conscience Protection Statutes," including the Church, Coats-Snowe, and Weldon Amendments, and the regulations at 45 C.F.R. Part 88, in Paragraph 6, which exceeds HHS's delegated authority. In 2019, the Department of Health and Human Services promulgated a rule that, among other things, would have required assurance of compliance with these laws—exactly as the agency is attempting to do now by imposing these requirements through another format. The 2019 rule was challenged, and the court held that the agency lacked authority to require assurance of

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[9] *See, e.g.*, Press Release, Nat'l Women's L. Ctr., Over 100 Organizations Condemn President Trump's Executive Order Targeting Transgender, Nonbinary, and Intersex Individuals (Jan. 28, 2025).
[10] *See Doctors for Am. v. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112 (D.D.C. 2025) (ruling OPM and HHS actions to implement EO 14168 to be arbitrary and capricious); *R.I. Latino Arts v. Nat'l Endowment for the Arts*, 800 F. Supp. 3d 351 (D.R.I. 2025) (ruling agency actions that disfavored grant applicants, consistent with EO 14168, to be arbitrary and capricious); *see also San Francisco AIDS Found. v. Trump*, Case No. 24-cv-01824 (N.D. Cal. 2025); *FreeState Just. v. EEOC*, Case No. 1:25-cv-02482 (D. Md. 2025).
[11] *R.I. Latino Arts*, 800 F. Supp. 3d at 373 (citing *Louisiana v. Biden,* 543 F. Supp. 3d 388, 414 (W.D. La. 2021), *vacated and remanded on other grounds*, 45 F.4th 841 (5th Cir. 2022)).
[12] *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982).
[13] *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110 (9th Cir. 2023); *A.C. v. Metro. Sch. Dist.*, 75 F.4th 760 (7th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).
[14] *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660-61 (2020).
[15] *See* Ctrs. for Disease Ctrl. & Prev., Health Disparities Among LGBTQ Youth (Nov. 29, 2024).
[16] Joseph G. Kosciw, Caitlin M. Clark & Leesh Menard, 2021 National School Climate Survey, GLSEN 25-28 (2022).

compliance with the Church, Coats-Snowe, and Weldon Amendments and the 2019 rule itself.[17] To the extent the agency is attempting to circumvent that decision and impose unconditional legal obligations to certify compliance with these statutes and the regulations at 45 C.F.R. Part 88, they have no authority to do so. It is particularly concerning that the agency is demanding compliance with 45 C.F.R. Part 88 given that it has indicated it plans to revise that regulation.[18]

"Religious Nondiscrimination authorities"

Paragraph 7 adds entirely new language on "Religious Nondiscrimination authorities." Most of the provisions cited are embedded within specific grant programs. Another provision is based in regulations that apply broadly to almost every social service program that the agency administers. Referencing program-specific provisions alongside broader statutory obligations ultimately creates confusion, particularly because many of these provisions contain diverging responsibilities and even impose conflicting requirements.[19]

Read literally, Paragraph 7 does not make clear that it is limited to only participants in the referenced programs. There is no basis for it to require *all* applicants to abide by *all* these "Religious Nondiscrimination authorities"—without restriction. Requiring *all* recipients to sign an assurance for compliance for these programs clearly would exceed the agency's authority.

Finally, while agency regulations explicitly require the assurances set out in Paragraphs 1-5, that is not the case for all the provisions listed in Paragraph 7. Like with Paragraph 6, the agency provides no justification or legal authority for these additions. The agency is trying to create new affirmative requirements for applicants without having statutory requirements or regulations to do so universally.

False Claims Act

Form HHS-690 requires applicants to agree that compliance "constitutes a material condition of continued receipt of Federal financial assistance" and that violations could give rise to liabilities under the False Claims Act (FCA), 31 U.S.C. § 3729. Invoking the FCA to enforce the administration's policy goals is far outside the historic and traditional use of the FCA. The FCA, which was enacted during the Civil War to counter fraud against the government, has generally been leveraged to address fraud such as false billings under Medicare and Medicaid. However, the Trump administration has increasingly used the law as a "weapon" to advance political objectives, with liability resulting in "treble damages and significant penalties."[20] The administration has "strongly encourage[d]" private parties to also use the False Claims Act to target contractors and grantees that engage in what it deems "unlawful" activity.[21] The new language mirrors new agency requirements for contractors and grantees to certify they do not operate any programs promoting diversity, equity, and inclusion that violate federal anti-discrimination laws that also include reference to the FCA.[22] Several courts have enjoined enforcement of these requirements.[23]

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[17] *New York v. U.S. Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475, 519-27 (S.D.N.Y. 2019).

[18] *See* OIRA, Making Technical Changes And Clarifying How OCR Addresses Conscience Authorities In Health Care; Delegation of Authority, RIN 0945-AA24 (Spring 2025).

[19] For example, while some provisions require the contractor or grantee to segregate government funds, others say segregation is optional. Compare 42 U.S.C. § 9920(d)(2) with 42 U.S.C. § 604a(h)(2). In addition, several provisions require beneficiaries to receive notice of their rights. The timing and method of notice as well as the specific rights delineated differ between programs. Compare 42 U.S.C. § 290kk-1 with 45 C.F.R. § 87.3.

[20] Memo. from Dep. Att'y Gen. Todd Blanche, Civil Rights Fraud Initiative (May 19, 2025).

[21] *Id.*

[22] These certification requirements were implemented in response to Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 21, 2025).

[23] *See, e.g.*, *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1255 (W.D. Wash. 2025); *Hous. Auth. of City & Cnty. of San Francisco v. Turner*, No. 25-CV-08859-JST, 2025 WL 3187761, at *21 (N.D. Cal.

Similarly, the new FCA language threatens to chill activities and speech that remain lawful because recipients will fear inviting liability under the FCA.[24] Any uncertainty with the underlying provisions compounds these problems and would give rise to due process concerns.[25]

Other Deficiencies with Revised Form

Secrecy
The Federal Register notice for the information collection was incomplete and misleading. Reading the notice, the only substantive change to Form HHS-690 one might expect is the deletion of sexual orientation and gender identity. The agency, however, has significantly changed the form in secret, only providing it upon email request. Without access to the revised form, the public cannot make informed comments and raise concerns about the changes.

Lack of Reasoning
The agency provides inadequate or no reasoning about the legal basis for its changes. In a secret Supporting Statement (also available only upon request), the agency characterizes the changes as continuing the previously approved collection "subject to minor modification" in order "to comport with current legal requirements and Executive Orders." The Federal Register notice claims that the "assurance is required by federal civil rights laws, conscience, and religious nondiscrimination laws." While there is a justification (albeit entirely flawed, see above) provided in the notice and Supporting Statement for changes to the definition of sex, there is no explanation as to what source of law allows for, much less compels, the addition of Paragraphs 6 and 7.

Vagueness
Paragraphs 6 and 7 each include the phrase "among others" at the end of the list of statutes and regulations that applicants must affirm they will follow, which seems to be an attempt to bind applicants to additional provisions without clearly listing them. Without understanding proper notice of all binding provisions or a clear understanding of their obligations, applicants may be unable to sign. Moreover, several of the cited provisions are in themselves in flux—including regulations the Trump Administration itself is trying to change.

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We urge you to further revise Form HHS-690 to correct legal and procedural problems outlined in our comments. If you have further questions, please contact Katie O'Connor, koconnor@nwlc.org, and Rachael Stryer, stryer@au.org.

Sincerely,

Advocates for Trans Equality
Alliance of Baptists
American Atheists
American Civil Liberties Union

Nov. 14, 2025); *Chicago Women in Trades v. Trump*, No. 1:25-CV-02005, 2025 WL 1118659 (N.D. Ill. Apr. 15, 2025).

[24] *Cf. Chicago Women in Trades v. Trump*, 773 F. Supp. 3d 592, 610 (N.D. Ill. 2025) ("Rather than spend their resources to challenge their patron in court or risk False Claims Act litigation, it is likely that many of these grantees will take the safer route and choose to simply stop speaking on anything remotely related to what the government might consider to promote DEI or equity.").

[25] *Cf. Hous. Auth. of City & Cnty. of San Francisco*, 2025 WL 3187761 at *15 ("The threat of civil and criminal liability under the FCA resulting from potential misinterpretation of Defendants' vague grant conditions further threatens Plaintiffs' property and liberty interests and exacerbates the due process problems with these conditions.").

American Humanist Association
Americans United for Separation of Church and State
Arkansas Black Gay Men's Forum
Baptist Joint Committee for Religious Liberty
Center for Freethought Equality
Center for Law and Social Policy (CLASP)
CenterLink
Clearinghouse on Women's Issues
Council for Global Equality
Doctors for America
Equality California
Feminist Majority Foundation
Guttmacher Institute
Human Rights Campaign
Ibis Reproductive Health
Institute for Women's Policy Research
interACT: Advocates for Intersex Youth
Interfaith Alliance
Japanese American Citizens League
League of United Latin American Citizens (LULAC)
The LGBTQIA+ Cancer Network
Movement Advancement Project
National Abortion Federation
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Health Law Program
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
People For the American Way
People Power United
Planned Parenthood Action Fund
Positive Women's Network-USA
Power to Decide
Religious Action Center of Reform Judaism
Reproductive Freedom for All
Rocky Mountain Equality
The Secular Coalition for America
Silver State Equality