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(3) May be maintained in any form and manner that affords OCR with reasonable access to them in a timely manner.

(c) *Cooperation.* The Department, each recipient, and each sub-recipient shall cooperate with any compliance review, investigation, interview, or other part of OCR's enforcement process, which may include production of documents, participation in interviews, response to data requests, and making available of premises for inspection where relevant. Failure to cooperate may result in an OCR referral to the Department of Justice, in coordination with the Department's Office of the General Counsel, for further enforcement in Federal court or otherwise. Each recipient or sub-recipient shall permit access by OCR during normal business hours to such of its books, records, accounts, and other sources of information, as well as its facilities, as may be pertinent to ascertain compliance with this part. Asserted considerations of privacy or confidentiality may not operate to bar OCR from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance reviews, investigations, or other enforcement activities shall not be disclosed except as required in formal enforcement proceedings or as otherwise required by law.

(d) *Reporting requirement.* If a recipient or sub-recipient is subject to a determination by OCR of noncompliance with this part, the recipient or sub-recipient must, in any application for new or renewed Federal financial assistance or Departmental funding in the three years following such determination, disclose the existence of the determination of noncompliance. This includes a requirement that recipients disclose any OCR determinations made against their sub-recipients.

(e) *Intimidating or retaliatory acts prohibited.* Neither the Department nor any recipient or sub-recipient shall intimidate, threaten, coerce, or discriminate against any entity for the purpose of interfering with any right or privilege under the Federal conscience and anti-discrimination laws or this part, or because such entity has made a com-

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plaint or participated in any manner in an investigation or review under the Federal conscience and anti-discrimination laws or this part.

§ 88.7 Enforcement authority.

(a) *In general.* OCR has been delegated the authority to facilitate and coordinate the Department's enforcement of the Federal conscience and anti-discrimination laws, which includes the authority to:

- (1) Receive and handle complaints;
- (2) Initiate compliance reviews;
- (3) Conduct investigations;
- (4) Coordinate compliance within the Department;
- (5) Seek voluntary resolutions of complaints;
- (6) In coordination with the relevant component or components of the Department and the Office of the General Counsel, make enforcement referrals to the Department of Justice;
- (7) In coordination with the relevant Departmental funding component, utilize existing regulations for involuntary enforcement, such as those that apply to grants, contracts, or CMS programs; and
- (8) In coordination with the relevant component or components of the Department, coordinate other appropriate remedial action as the Department deems necessary and as allowed by law and applicable regulation.

(b) *Complaints.* Any entity, whether individually, as a member of a class, on behalf of others, or on behalf of an entity, may file a complaint with OCR alleging any potential violation of Federal conscience and anti-discrimination laws or this part. OCR shall coordinate handling of complaints with the relevant Department component(s). The complaint filer is not required to be the entity whose rights under the Federal conscience and anti-discrimination laws or this part have been potentially violated.

(c) *Compliance reviews.* OCR may conduct compliance reviews or use other similar procedures as necessary to permit OCR to investigate and review the practices of the Department, Department components, recipients, and sub-recipients to determine whether they are complying with Federal conscience and anti-discrimination laws and this

part. OCR may initiate a compliance review of an entity subject to this part based on information from a complaint or other source that causes OCR to suspect non-compliance by such entity with this part or the laws implemented by this part.

(d) *Investigations.* OCR shall make a prompt investigation, whenever a compliance review, report, complaint, or any other information found by OCR indicates a threatened, potential, or actual failure to comply with Federal conscience and anti-discrimination laws or this part. The investigation should include, where appropriate, a review of the pertinent practices, policies, communications, documents, compliance history, circumstances under which the possible noncompliance occurred, and other factors relevant to determining whether the Department, Department component, recipient, or sub-recipient has failed to comply. OCR shall use fact-finding methods including site visits; interviews with the complainants, Department component, recipients, sub-recipients, or third-parties; and written data or discovery requests. OCR may seek the assistance of any State agency.

(e) *Failure to respond.* Absent good cause, the failure of an entity that is subject to this part to respond to a request for information or to a data or document request within 45 days of OCR's request shall constitute a violation of this part.

(f) *Related administrative or judicial proceeding.* Consistent with other applicable Federal laws, testimony and other evidence obtained in an investigation or compliance review conducted under this part may be used by the Department for, and offered into evidence in, any administrative or judicial proceeding related to this part.

(g) *Supervision and coordination.* If as a result of an investigation, compliance review, or other enforcement activity, OCR determines that a Department component appears to be in non-compliance with its responsibilities under Federal conscience and anti-discrimination laws or this part, OCR will undertake appropriate action with the component to assure compliance. In the event that OCR and the Depart-

ment component are unable to agree on a resolution of any particular matter, the matter shall be submitted to the Secretary for resolution. OCR may from time to time request the assistance of officials of the Department in carrying out responsibilities in connection with the enforcement of Federal conscience and anti-discrimination laws and this part, including the achievement of effective coordination and maximum uniformity within the Department.

(h) *Referral to the Department of Justice.* If as a result of an investigation, compliance review, or other enforcement activity, OCR determines that a recipient or sub-recipient is not in compliance with the Federal conscience and anti-discrimination laws or this part, OCR may, in coordination with the relevant Department component and the Office of the General Counsel, make referrals to the Department of Justice, for further enforcement in Federal court or otherwise. OCR may also make referrals to the Department of Justice, in coordination with the Office of the General Counsel, concerning potential violations of 18 U.S.C. 1001 or 42 U.S.C. 300a-8 for enforcement or other appropriate action.

(i) *Resolution of matters.* (1) If an investigation or compliance review reveals that no action is warranted, OCR will so inform any party who has been notified of the existence of the investigation or compliance review, if any, in writing.

(2) If an investigation or compliance review indicates a failure to comply with Federal conscience and anti-discrimination laws or this part, OCR will so inform the relevant parties and the matter will be resolved by informal means whenever possible. Attempts to resolve matters informally shall not preclude OCR from simultaneously pursuing any action described in paragraphs (a)(5) through (7) of this section.

(3) If OCR determines that there is a failure to comply with Federal conscience and anti-discrimination laws or this part, compliance with these laws and this part may be effected by the following actions, taken in coordination with the relevant Department component, and pursuant to statutes

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and regulations which govern the administration of contracts (*e.g.*, Federal Acquisition Regulation), grants (*e.g.*, 45 CFR part 75) and CMS funding arrangements (*e.g.*, the Social Security Act):

(i) Temporarily withholding Federal financial assistance or other Federal funds, in whole or in part, pending correction of the deficiency;

(ii) Denying use of Federal financial assistance or other Federal funds from the Department, including any applicable matching credit, in whole or in part;

(iii) Wholly or partly suspending award activities;

(iv) Terminating Federal financial assistance or other Federal funds from the Department, in whole or in part;

(v) Denying or withholding, in whole or in part, new Federal financial assistance or other Federal funds from the Department administered by or through the Secretary for which an application or approval is required, including renewal or continuation of existing programs or activities or authorization of new activities;

(vi) In coordination with the Office of the General Counsel, referring the matter to the Attorney General for proceedings to enforce any rights of the United States, or obligations of the recipient or sub-recipient, under Federal law or this part; and

(vii) Taking any other remedies that may be legally available.

(j) *Noncompliance with § 88.4.* If a recipient of Federal financial assistance or applicant therefor fails or refuses to furnish an assurance or certification required under § 88.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, OCR, in coordination with the relevant Department component, may effect compliance by any of the remedies provided in paragraph (i) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings brought under such paragraph.

§ 88.8 Relationship to other laws.

Nothing in this part shall be construed to preempt any Federal, State, or local law that is equally or more protective of religious freedom and

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moral convictions. Nothing in this part shall be construed to narrow the meaning or application of any State or Federal law protecting free exercise of religious beliefs or moral convictions.

§ 88.9 Rule of construction.

This part shall be construed in favor of a broad protection of the free exercise of religious beliefs and moral convictions, to the maximum extent permitted by the Constitution and the terms of the Federal conscience and anti-discrimination laws.

§ 88.10 Severability.

Any provision of this part held to be invalid or unenforceable either by its terms or as applied to any entity or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be severable from this part, which shall remain in full force and effect to the maximum extent permitted by law. A severed provision shall not affect the remainder of this part or the application of the provision to other persons or entities not similarly situated or to other, dissimilar circumstances.

APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND ANTI-DISCRIMINATION LAWS

[Name of recipient, the Department, or Department component] complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions. You may have the right under Federal law to decline to perform, assist in the performance of, refer for, undergo, or pay for certain health care-related treatments, research, or services (such as abortion or assisted suicide, among others) that violate your conscience, religious beliefs, or moral convictions.

If you believe that [Name of recipient, the Department, or Department component] has failed to accommodate your conscientious, religious, or moral objection, or has discriminated against you on those grounds, you can file a conscience and religious freedom complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for