

Obama issues final rules on contraceptive exemption

by [Sarah Pulliam Bailey](#)

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The Obama administration has issued final rules for religious groups for its controversial contraception mandate, maintaining its position on who qualifies for religious exemption and allowing no carve-outs for private business owners.

More than 60 lawsuits have been filed over the mandate, a part of President Obama's Affordable Care Act that requires most employers to provide contraception at no cost to employees.

As when the draft rules were first unveiled in February, conservatives denounced the final rules as an unconstitutional violation of religious freedom that forces religious organizations and the religious owners of private businesses to offer services they find morally abhorrent.

Opponents of the mandate say that, without relief, they will be forced to provide coverage for medication and sterilization procedures that they believe are tantamount to abortion.

"The Obama administration insists on waging war on religious freedom, and the final rule issued today confirms that," said Gregory S. Baylor, a lawyer with the conservative legal group Alliance Defending Freedom. "On multiple levels, the president is articulating what is arguably the most narrow view of religious freedom ever expressed by an administration in this nation's history."

A "safe harbor" agreement that gave temporary reprieve from the contraceptive requirement was supposed to end in August, but on June 28 the administration extended it to January 2014.

Cardinal Timothy Dolan, archbishop of New York and president of the U.S. Conference of Catholic Bishops, who has led the charge against the mandate under the banner of religious freedom, welcomed the five-month reprieve but said the rules were too “long and complex” to give an immediate reaction.

The finalized rules from the Department of Health and Human Services come after months of intense battles over who could qualify for an exemption from the required coverage. As they did in February, the final rules define “religious employer” to include houses of worship and affiliated organizations such as hospitals or universities.

[“The health care law guarantees millions of women access to recommended preventive services at no cost,” said Kathleen Sebelius, the HHS secretary, as quoted by the *New York Times*.]

In a compromise that conservatives have called inadequate, the rules also transfer the cost of contraceptives away from objecting employers to insurance companies.

The HHS has different requirements for whether organizations qualify as an exempt religious employer or a nonprofit religious organization. One change from the February proposal is that religious institutions can qualify for exemption even if they employ people not of their faith.

If a nonprofit religious organization objects to covering contraceptives, its insurer or a third-party administrator will need to find coverage.

Before issuing the final rules, HHS received more than 400,000 comments from the public, said Chiquita Brooks-LaSure, deputy director for policy and regulations at the HHS Center for Consumer Information and Insurance Oversight.

Liberal groups said the administration has been more than flexible with its critics. “With this rule, the administration continues to stand by women and our families and refuses to let employers use religion to discriminate,” said Sarah Lipton-Lubet, an attorney with the American Civil Liberties Union.

The new rules, however, do not apply to private businesses whose owners have religious or moral objections to contraception—and that issue has already been a major battleground in federal courts.

Hobby Lobby, a Christian-owned arts-and-crafts chain that's suing the government over the mandate, won a round June 27 in its bid to not offer the contraception coverage to employees. Without an immediate injunction, Hobby Lobby was required to provide contraceptives on July 1 or face \$1.3 million a day in fines, said Eric Rassbach, deputy general counsel at the Becket Fund for Religious Liberty.

A Florida district court ruled in late June that a Christian-owned electric company is not required to provide contraception coverage to employees.

Cases involving for-profit organizations have seen more court action than those with nonprofits because courts were awaiting final rules for religious nonprofits, Rassbach said. He told reporters to expect new lawsuits to be filed in days ahead now that the final rules have been issued.

"The easy way to resolve this would have been to exempt sincere religious employers completely, as the Constitution requires," he said. "Instead, this issue will have to be decided in court."

On the other hand, some are seeing the government's rules as too lenient for religious organizations.

"The government has already bent over backward to accommodate these groups," said Barry W. Lynn, executive director of Americans United for Separation of Church and State. "These churches are out of step with the times, and it's time for the government to stop bending." —RNS

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