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May 26, 2026

Via RegInfo.gov (https://www.reginfo.gov/public/do/PRAMain)

Administrator, Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget (OMB)
725 17th Street, NW
Washington, D.C. 20503

Re: Assurance of Compliance, Form HHS-690, OMB Control No. 0945-0008, ICR Reference No. 202603-0945-001

Dear Administrator:

We, the Attorneys General for the States of New York, California, Arizona, Colorado, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Vermont, Virginia, Washington, and the District of Columbia ("the States") write in opposition to the Department of Health and Human Services's ("HHS") information collection request entitled "Assurance of Compliance, Form HHS-690," which was first noticed in the Federal Register on January 26, 2026, and the accompanying proposed HHS-690 form.[1] HHS received public comments, and on April 24, 2026 issued a second notice in the Federal Register and submitted a slightly revised information collection to the Office of Management and Budget ("OMB") for review and approval.[2]

The Assurance of Compliance is a form that all applicants for financial assistance must sign in order to receive federal funds from HHS.[3] In the January 26 notice, HHS explained that the instant request is for a revision to the previous version of the form with changes meant to conform it with "E.O. 14168 on 'Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government' and the court order in *Texas v. Becerra*, No. 6:24-CV-21-JDK, 2024 WL 4490621, at *2 (E.D. Tex. Aug. 30, 2024) . . . ."[4] Moreover,

[1] *Agency Information Collection Request; 60-Day Public Comment Request*, 91 Fed. Reg. 3205 (Jan. 26, 2026).
[2] *Agency Information Collection Request; 30-Day Public Comment Request*, 91 Fed. Reg. 22158 (Apr. 24, 2026).
[3] Proposed Assurance of Compliance, Form HHS-690 (2026), https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202603-0945-001&icID=238746.
[4] 91 Fed. Reg. 3205.

HHS asserted that the assurances contained therein are "required by the federal civil rights laws, conscience, and religious nondiscrimination laws enforced by the Office for Civil Rights ["OCR"]."[5] In this first notice, HHS did not publish the text of the proposed revisions, but instead instructed interested parties to contact an official at OCR for "copies of supporting material for the proposed collection(s) summarized in this notice."[6] The supporting materials revealed that the proposal would make significant changes to the Assurance of Compliance, including the omission of "sexual orientation" and "gender identity" from the definitions of "sex" referencing Title IX of the Education Amendments of 1972 and Section 1557 of the Patient Protection and Affordable Care Act, as well as the addition of an expansive definition of every "program or activity" covered by the Assurance of Compliance. The revised HHS-690 form would also require applicants and recipients to certify compliance with various conscience and religious nondiscrimination protections and contains an explicit reference to potential liability under the False Claims Act for failure to comply with the certifications therein.

Several commenters responded to HHS's notice during the 60-day period. After receiving these comments, HHS made only minor revisions to the Assurance of Compliance, offering very little in terms of explanation for rejecting the commenters' concerns.[7]

While changes to the HHS-690 form cannot themselves change federal law or modify applicants' obligation to comply with applicable civil rights laws, the proposed revisions nonetheless could sow confusion for the thousands of entities that apply for and receive federal funds from HHS every year. Further, because the revisions to the HHS-690 form cannot alter federal law, they are unnecessary. Moreover, the ambiguous revisions could confuse applicants and recipients of federal funding regarding their obligations under the Assurance of Compliance. Therefore, OMB should decline to approve the information request.

I. HHS's Obligations Under the Paperwork Reduction Act

The purpose of the Paperwork Reduction Act ("the PRA") is to "minimize the paperwork burden[s]" imposed on the public.[8] An agency must publish a notice of its proposed information collection in the Federal Register for a 60-day public comment period on statutorily required topics, including "whether the proposed collection of information is necessary;" how to "minimize the burden of the collection of information" on respondents; "enhance the quality, utility, and clarity of the information to be collected;" and "evaluate the accuracy of the agency's estimate of the burden."[9]

The agency must respond to comments and certify that the proposed information collection meets ten statutory criteria, including that the collection is "necessary for the proper performance of the functions of the agency," "reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency," is "not unnecessarily

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[5] *Id.*
[6] *Id.*
[7] *See* Form HHS-690 Supporting Statement for OMB Final Review (2026), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202603-0945-001.
[8] 44 U.S.C. § 3501(1).
[9] *Id.* § 3506(c)(2)(A).

duplicative of information otherwise reasonably accessible to the agency," "[h]as practical utility," and contains "unambiguous terminology."[10]

When the agency submits the information collection to OMB for approval, the agency must publish a notice in the Federal Register for a 30-day comment period.[11] OMB must determine if the agency's revised form "is necessary for the proper performance of the agency's functions," and whether "the burden of the collection of information is justified by its practical utility."[12] If OMB determines the agency fails to make the required showing, and "to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such [information] collection or portion thereof."[13]

Here, HHS failed to sufficiently notify the public of its proposed revisions to the HHS-690 form in violation of the PRA.[14] Because HHS did not publish the proposed revised HHS-690 form in its initial January 26, 2026 notice, HHS deprived the public of the ability to review and comment on the specific proposed changes in the revised HHS-690 form. Instead, HHS only notified the public as to a brief characterization of its revisions.[15]

II. HHS's Revisions to the Assurance of Compliance are Unnecessary and Confusing.

The revisions to the HHS-690 form, which the agency estimates will cost covered entities over $4.2 million, are unnecessary, duplicative, and risk diminishing the quality, utility, and clarity of the information collected in violation of the PRA.[16] While these revisions do not change applicants and recipients' legal obligations, the proposed HHS-690 form could nonetheless confuse them and thus violate the PRA.

A. Revisions to Definitions of "Sex" in Title IX and Section 1557

HHS's removal of "sexual orientation" and "gender identity" from the definitions of "sex" in its references to Title IX of the Education Amendments of 1972 and Section 1557 of the Patient Protection and Affordable Care Act is unnecessary and could potentially confuse applicants and recipients about their nondiscrimination obligations. The revised definitions do not change funding applicants and recipients' obligations under Title IX and Section 1557, nor do they legally prohibit applicants and recipients from protecting against discrimination on the basis of "sexual orientation" and "gender identity." But the revised language in the HHS-690 form could lead applicants and recipients to conclude otherwise.

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[10] *Id.* § 3506(c)(3).
[11] 5 C.F.R. § 1320.10(a).
[12] *Id*. § 1320.5(e).
[13] *Id*. § 1320.5(f).
[14] *Id*. § 1320.10(a).
[15] *See* 91 Fed. Reg. 3205.
[16] Public comments may address any aspect of the revised HHS-690 form, including: "(1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques . . . ." 91 Fed. Reg. 22158.

In addition, the revised form contains different definitions of "sex" for Title IX and Section 1557. The proposed "sex" definition in Title IX protects against discrimination on the basis of "pregnancy," whereas the proposed Section 1557 "sex" definition does not reference pregnancy discrimination. The inconsistency in these definitions is unreasoned, and it is also unnecessary because Section 1557 expressly prohibits discrimination on the bases protected under Title IX.[17] This unjustified discrepancy could confuse applicants and recipients about their obligations under the two nondiscrimination laws and could incentivize applicants and recipients to provide fewer protections for pregnant people.

HHS's revisions to the definition of "sex" also contradict an HHS regulation that interprets many HHS authorities prohibiting sex discrimination "to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), and other federal court precedent applying *Bostock*'s reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity." 2 C.F.R. § 300.300(c). HHS does not provide a reasoned explanation for revising the HHS-690 form in a way that is inconsistent with its own regulation.

Furthermore, HHS claims its revisions to the definition of "sex" "hew closely to the statutory text" of Title IX and Section 1557.[18] HHS also argues that its revised definitions "conform[] to E.O. 14168 on 'Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government' and the court order in *Texas v. Becerra*, No. 6:24–CV–211–JDK, 2024 WL 4490621, at *2 (E.D. Tex. Aug. 30, 2024) (staying nationwide the Section 1557 Final Rule definition of sex discrimination as including 'sex characteristics, including intersex traits'; 'pregnancy or related conditions'; 'sexual orientation'; 'gender identity'; and 'sex stereotypes'). . . ."[19] And HHS misleadingly asserts that "attempts to expand the definition beyond statutory text have generally been unsuccessful in court."[20] But federal courts have held that Title IX prohibits discrimination on the basis of sexual orientation and gender identity.[21] And courts have held similarly as to Section 1557's protections on the basis of gender identity.[22] The *Texas v. Becerra* decision may have stayed the effective date of a Section 1557 Final Rule defining sex discrimination, but that decision did not establish a nationwide interpretation of the scope of nondiscrimination protections under Title IX and Section 1557. HHS's justification for its revised definition of "sex" suggests otherwise, creating harmful ambiguity.

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[17] *See* 42 U.S.C. § 18116(a) ("[A]n individual shall not, on the ground prohibited under . . . title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity . . . .").
[18] 91 Fed. Reg. 22158.
[19] *Id*.
[20] Form HHS-690 Supporting Statement for OMB Final Review (2026), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202603-0945-001.
[21] *See, e.g.*, *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); *Tovar v. Essentia Health*, 342 F. Supp. 3d 947 (D. Minn. 2018).
[22] *See, e.g.*, *Hammons v. Univ. of Md. Med. Sys. Corp.*, 649 F. Supp. 3d 104, 115–17 (D. Md. 2023); *Tovar*, 342 F. Supp. 3d 947.

B. Addition of Conscience Protection Statutes and Religious Nondiscrimination Authorities

HHS's additions of the conscience protection statutes and religious nondiscrimination authorities likewise are unnecessary and risk confusing applicants and recipients regarding their obligations under the Assurance of Compliance. Federal regulations require that HHS obtain certification to the laws listed in the first five paragraphs of the Assurance of Compliance: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title IX; The Age Discrimination Act of 1975; and Section 1557 of the Patient Protection and Affordable Care Act. But Congress has not delegated to HHS any authority to condition the receipt of federal funds on certification of compliance with the conscience protection and religious nondiscrimination provisions. If included in the form, applicants and recipients could be left uncertain as to whether, and how, the certifications might be enforced.

First, the proposed form requires applicants and recipients to certify compliance with the conscience protections statutes, including the Church,[23] Coats-Snowe,[24] and Weldon amendments,[25] "among others," and 45 C.F.R. Part 88. To impose such conditions on the receipt of federal funds would exceed HHS's authority. The 2019 rule codified at 45 C.F.R. Part 88 would have required certification of compliance with these laws and with the rule itself, but it was vacated by a federal court before it could go into effect.[26] HHS has not offered any explanation for why it could enact these changes by information collection request despite the rule's vacatur. Moreover, in September 2025 HHS indicated its intent to modify 45 C.F.R. Part 88,[27] leaving open considerable uncertainty regarding the ultimate meaning of the proposed certification.

Second, the proposal would require certification of compliance with a list of religious nondiscrimination authorities. These terms have never been included in previous versions of the form, and they consist largely of provisions related to specific grant programs. HHS has no statutory or regulatory authority to add them to the HHS-690 form. And because compliance with each of the listed provisions is a condition of participation in their respective programs, including them in the Assurance of Compliance that applies broadly to all HHS funding is unnecessary and duplicative. It could also sow confusion, because the plain language of the form could create the impression that each of the requirements applies broadly to all federal funding, not only to the specific programs subject to those restrictions.

Finally, both proposed certifications are improperly vague and provide applicants and recipients with insufficient notice of their legal obligations. The list of conscience protection statutes purports to incorporate authorities not specifically referenced by appending the modifier "among others" after the listed statutes. And the final caveat that applicants and recipients must certify their compliance with the conscience protection statutes "to the extent that the rights of

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[23] 42 U.S.C. § 300a-7.
[24] 42 U.S.C. § 238n.
[25] Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. B, tit. V, § 507(d), 140 Stat 170, 317 (Feb. 3, 2026).
[26] *New York v. United States Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475 (S.D.N.Y. 2019).
[27] *Making Technical Changes and Clarifying How OCR Addresses Conscience Authorities in Health Care; Delegation of Authority*, RIN 0945-AA24, 90 Fed. Reg. 45512 (Sept. 22, 2025).

conscience are protected and associated discrimination and coercion are prohibited"[28] is unclear and fails to adequately put applicants and recipients on notice of the intended meaning of the assurance. Similarly, HHS improperly seeks to expand the scope of the religious nondiscrimination authorities by inserting the language "among others" at the end of the list of provisions in this category. Such a qualifier renders the certification vague and confusing, and would force applicants and recipients to attempt to predict exactly which authorities might be covered.

C. Explicit Threat of False Claims Act Liability

The threat that noncompliance with the HHS-690 form could violate the False Claims Act ("FCA")[29] improperly leverages the FCA to coerce preemptive compliance with the federal government's policy priorities. HHS does not have authority to expand the scope of a federal statute in an Assurance of Compliance, and the reference to the FCA has the potential to chill legal speech and conduct by covered entities. Applicants and recipients may feel compelled to accept the administration's policies, including those contrary to the interests of the LGBTQ community, in order to avoid an investigation and potential penalties under the FCA. Several federal courts have enjoined enforcement of provisions threatening federal grantees with FCA liability for failure to comply with terms and conditions disallowing programs promoting diversity, equity, and inclusion.[30]

Moreover, the new language is unnecessary because the prior version of the HHS-690 form provided sufficient notice of FCA liability without an express reference to the Act or liability thereunder. The new language also has the capacity to confuse applicants and recipients who may incorrectly interpret the new language as expanding the scope of FCA liability.

D. Misleading Definition of Program or Activity

The revised HHS-690 form states that "the term 'program or activity' is defined expansively in statute to cover all of the operations of certain entities receiving federal funds, even if only part of the entity receives the funds."[31] To the extent the HHS-690 form purports to expand or alter the definition of "program or activity" for purposes of the application of either Title IX or Section 1557, this form is not the appropriate vehicle for such rulemaking, and will lead to confusion. For example, this description of a covered "program or activity" appears to lump together educational institutions with state and local governments, creating the confusing and inaccurate implication that all aspects of state or local government are covered by the civil

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[28] Proposed Assurance of Compliance, Form HHS-690 (2026), https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202603-0945-001&icID=238746.

[29] 31 U.S.C. § 3729.

[30] *See, e.g.*, *Rhode Island Coal. Against Domestic Violence v. Kennedy*, 812 F. Supp. 3d 180 (D.R.I. 2025), *appeal dismissed sub nom. Rhode Island Coal. Against Domestic Violence v. United States Dep't of Hous. & Urb. Dev.*, No. 25-2229, 2026 WL 926474 (1st Cir. Jan. 5, 2026); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224 (W.D. Wash. 2025); *Hous. Auth. of City & Cnty. of San Francisco v. Turner*, No. 25-CV-08859-JST, 2025 WL 3187761 (N.D. Cal. Nov. 14, 2025); *Chicago Women in Trades v. Trump*, No. 1:25-CV-02005, 2025 WL 1118659 (N.D. Ill. Apr. 15, 2025).

[31] Proposed Assurance of Compliance, Form HHS-690 (2026), https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202603-0945-001&icID=238746.

rights laws listed in the HHS-690 form. But Title IX only applies to non-educational institutions' educational programs or activities that receive HHS funding, as opposed to *every* program or activity, regardless of its educational nature.[32]

E. Inaccurate and Unnecessary Burden

HHS failed to satisfy its burden under the PRA to show that the proposed revised HHS-690 form is the "least burdensome necessary."[33] HHS severely underestimated the number of applicants and recipients that will be subject to the HHS-690 form and thus conducted an inaccurate analysis of the burden.[34] HHS anticipates that roughly 8,540 applicants and recipients will be subject to the revised HHS-690 form,[35] but that estimate is extremely low given that HHS identified over 14,000 funding recipients in fiscal year 2025.[36]

Moreover, HHS's vague and confusing revisions will require applicant and recipient employees and their counsel to spend substantial time and resources interpreting the revisions and determining their legal obligations. The likelihood of an increased burden on applicants and recipients makes clear the revised HHS-690 form is not the "least burdensome necessary."[37] Applicants and recipients should not bear the burden of additional time and expense caused by the revised HHS-690 form, especially given the limited practical advantages of the proposed form over the previous one.

III. The Revised HHS-690 Form Violates the Administrative Procedure Act.

To the extent that the revised HHS-690 form imposes any new substantive requirements, is interpreted by applicants or recipients as doing so, or is enforced against applicants or recipients to impose new substantive requirements, it violates the Administrative Procedure Act. For example, to the extent HHS intends the revised HHS-690 form to "impose[] new rights or duties" on applicants and recipients, the revised HHS-690 form is a legislative rule required to undergo notice-and-comment rulemaking.[38] Furthermore, HHS acted in excess of its statutory authority when it added the conscience protection statutes and religious nondiscrimination authorities to the HHS-690 form. And, HHS's revisions are contrary to law because they constitute new certification requirements that violate the Spending Clause's clear notice requirement.[39]

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[32] *Title IX of the Education Amendments of 1972*, HHS (rev. May 2, 2025), https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/title-ix-education-amendments/index.html ("Title IX prohibits sex discrimination in the education programs and activities of entities that receive federal financial assistance.").
[33] 5 C.F.R. § 1320.5(d)(1)(i); *see also* 44 U.S.C. § 3506(c)(3).
[34] *See* 5 C.F.R. 1320.3(b)(1) (defining "Burden" broadly).
[35] 91 Fed. Reg. 22158.
[36] *Tracking Accountability in Government Grants System*, U.S. Department of Health and Human Services, https://taggs.hhs.gov/ (last visited May 20, 2026).
[37] 5 C.F.R. § 1320.5(d)(1); *see also* 44 U.S.C. § 3506(c)(3).
[38] *Children's Hosp. of the King's Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018) (quoting *Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n*, 874 F.2d 205, 207 (4th Cir. 1989)) (distinguishing between legislative and interpretative rules).
[39] *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981).

IV. Conclusion

In light of the foregoing, the undersigned Attorneys General strongly urge OMB to deny HHS's requested information collection revision.

Sincerely,

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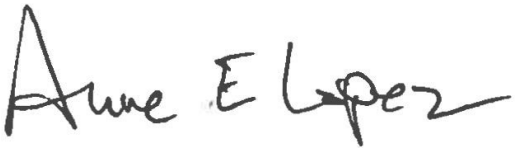

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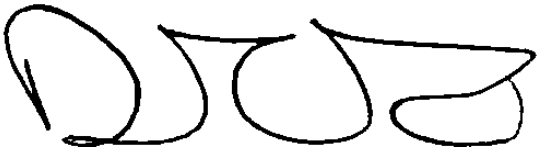

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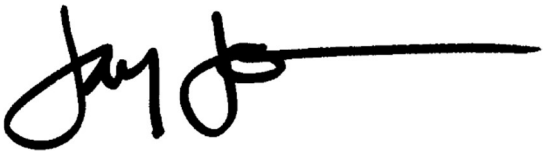

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