



U.S. Department of Justice
Civil Division
950 Pennsylvania Ave. NW, Rm. 7214
Washington, DC 20530

VIA CM/ECF

January 16, 2024

Catherine O'Hagan Wolfe, Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Family Equality v. Becerra*, No. 22-1174 (argument held March 22, 2023 before Judges Parker, Lynch, and Lohier)

Dear Ms. O'Hagan Wolfe:

We write to update the Court on the status of the rulemaking addressed in the government's July 24, 2023 letter.

As previously explained, in July 2023, the Department of Health and Human Services (HHS) issued a notice of proposed rulemaking to repromulgate and revise certain provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. *See* 88 Fed. Reg. 44,750 (July 13, 2023). As relevant to this litigation, HHS has proposed to amend the provisions of the 2016 Rule that are subject to the 2019 Notice of Nonenforcement that plaintiffs seek to challenge. *See id.* at 44,753, 44,759. The final rule, once promulgated, is expected to supersede both the 2016 Rule and the 2019 Notice of Nonenforcement.

The 60-day period for public comment closed on September 11, 2023, and yielded over 8,000 comments on the proposed rule (including several submissions by plaintiffs). *See* Health and Human Services Grants Regulation, <https://www.regulations.gov/docket/HHS-OCR-2023-0011/comments>. HHS is moving quickly to consider these comments and to issue a final rule that addresses them. As reflected in the Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions, a final rule is expected to issue within a few months. *See* Health and Human Services Grants Regulation, RIN 0945-AA19, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0945-AA19> (summarizing rule's basis and purpose and targeting completion by March 2024). We will promptly inform the Court once the final rule has issued.

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Sincerely,

Michael S. Raab
/s/ Jeffrey E. Sandberg
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