WASHINGTON
LEGISLATIVE OFFICE

June 7, 2013

Keith Willingham
Director, Combined Federal Campaign
U.S. Office of Personnel Management
Room 6484A
1900 E Street, NW
Washington, DC 20415

RE: RIN 3206–AM68, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

Dear Mr. Willingham:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we are writing to comment on proposed changes to the rules for the Combined Federal Campaign (CFC).

We would like to comment on two separate issues.

- **ACLU urges modifications to regulatory changes that will significantly reduce donations to charitable causes.**

We are deeply concerned about proposed changes to the process for contributing federal employees and for participating charities. It is our view, and that of many experts, that the proposed changes will drastically reduce donations to the ACLU Foundation and other important charities serving communities across the country.

The ACLU Foundation is a longstanding participant in the CFC. The CFC—the largest and most successful workplace-giving program in the world—provides federal employees with an efficient mechanism for contributing to organizations whose missions they support. The donations these federal employees make to the ACLU Foundation totaled $251,142 during the last completed campaign year and are expected to be even higher during the current campaign year. These donations provide a critical source of income for the ACLU Foundation and this reliable income stream helps ensure the stability and longevity of our work across the country defending and advancing the rights and liberties of everyone, especially for the most vulnerable among us.

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We are particularly concerned about the following elements of the proposed rule:

Section 950.402 proposes eliminating paper pledges, which currently represent 78% of campaign giving, as well as cash/check contributions, which currently represent 10% of giving or $27 million nationwide. Further, it is important to note that many federal employees—particularly members of the armed forces, Postal Service employees, and others who do not have access to computers in their workplaces—use these traditional methods of giving. These would be eliminated, therefore preventing many federal employees from being able to participate in the program and support those organizations whose missions they believe in. We anticipate that CFC giving will drop dramatically if this rule is implemented.

In Section 950.107, OPM proposes the introduction of an upfront fee that would increase administrative burdens and costs for charities that receive CFC funding. The upfront fee—which despite requests, OPM has yet to disclose the amount or any further detail—will discourage participation in the program by many smaller charities for whom the fee would be burdensome. It also may discourage participation by newer or less-well-known charities that may be unwilling to pay the fee because they are not certain that they will receive contributions through the program sufficient to justify the fee. This fee is counter to the intent of the campaign.

It is poor public policy for the federal government to make changes in the CFC that will undoubtedly result in raising less money for charities, increased burden on those charities, and fewer opportunities for federal employees to engage in philanthropy. This will significantly impact the ACLU Foundation and the many other important organizations that serve communities across the country.

- **ACLU favors changes to Sections 950.110 and 950.202 that strengthen protections against discrimination.**

We support the changes made to strengthen and extend protections against discrimination within the CFC and by the charities it supports.

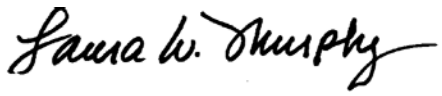
The proposed changes to Section 950.110, which prohibits discrimination in all aspects of the management and execution of the CFC, will augment the existing protected bases to include pregnancy and gender identity within sex; sexual orientation; genetic information; and any other non-merit based factor. This proposed language provides a much needed modernization of CFC program regulations, bringing them in line with current legal standards. These additional protections will also foster an inclusive environment that will undoubtedly increase organization participation, which enhances the overall program.

In addition, we support the revisions to the eligibility requirements for Family Support and Youth Activities (FSYA) programs located on domestic military bases, specifically the updated language found in Section 950.202(a)(4)(v). This will require every FSYA program to have in place a policy and practice of nondiscrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. This nondiscrimination requirement would also apply to Family Support and Youth Programs (FSYP) on non-domestic military bases. FSYA and FSYP programs are designed to provide much needed support to families on base. The proposed revised language will help to ensure that all military families, including those who are LGBT, have access to these federally recognized programs and services.

Finally, we applaud OPM's efforts to ensure that discrimination has no place in government programs. Such discrimination is contrary to our nation's laws and values. Policies that advance equality are central, necessary, and common requirements for participation in government programs.[1] Moreover, any arguments that nondiscrimination provisions such as these would substantially burden religious exercise are utterly misplaced.[2] Religiously affiliated organizations, like any other organization, must abide by nondiscrimination provisions in the same way they must fulfill other responsibilities connected with participation in government programs.

We hope these comments are useful in your continued review of the proposed rule. Please contact Dena Sher, Legislative Counsel, at 202-715-0829 or dsher@dcaclu.org if you have questions or concerns about our comments.

Sincerely,



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[1] *See, e.g.*, *Boy Scouts of Am. v. Wyman*, 335 F.3d 80, 91-98 (2d Cir. 2003) (upholding removal of organization from state-sponsored workplace giving program because organization did not fulfill program's nondiscrimination requirement).

[2] *See Locke v. Davey*, 540 U.S. 712 (2004) (distinguishing between coercive actions that substantially burden free exercise and a condition on funding that was "a relatively minor burden"); *see also Christian Legal Society v. Martinez*, 130 S. Ct. 2971, 2986 (2010) (student group seeking official university recognition "face[d] only indirect pressure to modify its membership policies" with university nondiscrimination policy); *Grove City v. Bell*, 465 U.S. 555, 575 (1984).