Colorado Christian
UNIVERSITY

Office of the President

March 26, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9968, P.O. Box 8013
Baltimore, MD 21244-1850

Re: **CMS-9968-NPRM**

Colorado Christian University (CCU) respectfully submits the following comments in response to the above-referenced Notice of Proposed Rulemaking ("NPRM") focused on contraceptive services coverage requirements for religious-based employers.

CCU is a small, evangelical Christian university located in Lakewood, Colorado. Unlike our Roman Catholic brethren, CCU has no religious objections to true contraceptives, but we do have deeply held religious and moral objections to abortion, and strongly believe that requiring CCU to provide or facilitate the provision of the two mandated abortifacients (Ella and Plan B) violates our First Amendment rights as well as the protections guaranteed by the Religious Freedom Restoration Act (RFRA).

There really is no sound reason for the Administration not to have created a clear exemption for all religious organizations, (and for-profit entities and others with sincere religious and moral objections to sterilization, contraception and abortifacients). Instead, the NPRM continues a two-tier system for religious entities. CCU is essentially placed in a second-class category, as if our beliefs are somehow not as important as the church down the street. This bifurcation of religious organizations is also, in our view, a violation of the First Amendment and RFRA—it falsely assumes that preaching one's faith is religious, while living it out is not. The First Amendment guarantees freedom of religion, not just freedom of worship.

Moreover, the proposed mandate actually violates the Affordable Care Act itself. Section 1303(b)(1)(A) of the Act provides that "nothing in this title shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." There is nothing in the legislative history or the text of the Act itself to indicate that Congress intended to bar coverage of surgical abortions, but permit drug-induced abortions.

8787 W. Alameda Avenue • Lakewood, CO 80226
www.ccu.edu • 303.963.3350 • fax: 303.963.3351

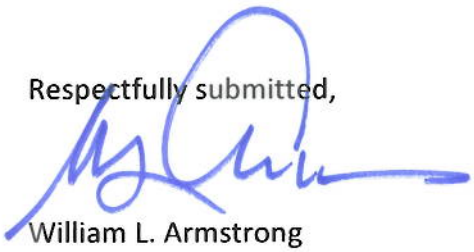
CCU is a self-insured organization, and has contracted with a Third Party Administrator ("TPA") to administer our health care plan. The NPRM does not actually propose language to deal with self-insured entities, but offers three possible options for providing for "emergency contraceptive" coverage. It would appear that all of these options would require CCU's TPA to find an insurer that will automatically issue individual abortifacient-only plans to all persons enrolled in CCU's group plan. This insurer would then be given an adjustment in the Federally-facilitated Exchange user fee and the insurer is supposed to share a portion of that adjustment with the TPA to offset the TPA's costs in arranging for this individual coverage.

There are several serious problems raised by this approach. First and foremost, the group plan itself continues to facilitate access to the abortifacients to which CCU has a religious and moral objection—CCU is the gateway to this coverage. Thus, CCU is being forced to violate its religious beliefs. Second, CCU's employees are also forced to accept coverage for their families to which they have their own religious or moral objections. All of CCU's employees have chosen to work for the University, have signed a statement of faith agreeing with CCU's Christian beliefs and understand CCU's Strategic Objectives, one of which specifically deals with the sanctity of life. Finally, the approach suggested in the NPRM is not viable as a matter of law. As fully explained by the Self-Insurance Institute of America in its May 7, 2012 comments, if a TPA were to accept a rebate from the insurer to cover its costs of arranging for individual "emergency contraceptive" coverage, such an arrangement "would likely be deemed a prohibited transaction in accordance with . . . ERISA".

This entire complicated regulatory formulation, or "accommodation" as defined in the NPRM, is being forced upon religious organizations like CCU in violation of its rights of conscience guaranteed by the First Amendment and RFRA. And why is this so--because, in the unlikely event that a CCU employee wants to use one of these abortion pills, she would have to pay $35 out of her own pocket.

CCU respectfully requests the Administration to exempt all *bona fide* religious employers, as well as for-profit employers with religious or moral objections to contraceptive coverage, from the contraceptive mandate.

Respectfully submitted,



William L. Armstrong
President