



July 31, 2018

**VIA ELECTRONIC TRANSMISSION**

Alex Azar, Secretary of Health and Human Services  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

Valerie Huber, Senior Policy Advisor, Assistant Secretary for Health  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

Diane Foley, Deputy Assistant Secretary for Population Affairs  
Office of the Assistant Secretary for Health, Office of Population Affairs  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

**Attn: Comments on HHS-OS-2018-0008, RIN 0937-ZA00—Compliance with Statutory Program Integrity Requirements**

Dear Secretary Azar, Senior Advisor Huber, and Deputy Assistant Secretary Foley:

The Global Justice Center submits these comments in response to the Department of Health and Human Services' (HHS) Proposed Rule entitled Compliance with Statutory Program Integrity Requirements, which was published in the Federal Register on June 1, 2018.<sup>1</sup>

The Global Justice Center ("GJC") is an international human rights organization based in New York dedicated to achieving gender equality through the rule of law. For the past decade, GJC has been at the forefront of efforts to ensure that the law protects and promotes access to comprehensive sexual

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<sup>1</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25502 (Jul. 1, 2018) (to be codified at 42 CFR §59).



and reproductive health and rights for women and girls around the world. As experts in women’s rights and human rights, we write to express our vehement opposition to this Proposed Rule.

The Proposed Rule, through its elimination of long-standing requirements which ensure women receive information, counseling, and referrals with regards to pregnancy: (1) imposes broad and sweeping limits on abortion-related speech that violate medical ethics; (2) denies women access to information and services they are entitled to; and (3) imposes unlawful and impermissible limits on abortion-related speech in violation of free speech. The impact of the Proposed Rule, should it go into effect, will be disastrous for women and girls and put the United States in violation of its human rights obligations. For these reasons, the Global Justice Center urges HHS to withdraw the Proposed Rule.

### **I. The Proposed Rule Imposes Broad and Sweeping Limits on Abortion-Related Speech in Violation of Medical Ethics**

The Proposed Rule eliminates long-standing requirements mandating the provision of neutral, factual information and nondirective counseling on all pregnancy options, as well as the provision of referrals for the full range of pregnancy options, including prenatal care and delivery, infant care, foster care, or adoption, and abortion.<sup>2</sup> These requirements would be replaced with a total ban on abortion referrals,<sup>3</sup> through the enactment of sweeping restrictions, including to “not perform, promote, refer for, or support” abortion “nor take any other affirmative action to assist a patient to secure such an abortion.”<sup>4</sup>

Title X’s legislative and current regulatory requirement for nondirective counseling on all pregnancy options is centered on women’s rights and medical needs. It does not mandate the type of counseling, information, or referrals women receive; rather, it ensures that they are provided the opportunity to receive counseling on all options, have their questions answered, and receive information and referrals relevant to whatever options they might choose. By eliminating the requirement that Title X projects provide nondirective counseling on all pregnancy options, the Proposed Rule allows, and even directs, providers to withhold information from patients.

The limited exception in the Proposed Rule, which would allow Title X projects to provide women with a list of health service providers, some of whom *may* provide abortion services, will not meaningfully assist women in receiving the care they seek, nor does it mitigate the harm of doctors withholding information from their patients. First, the provision of such a list is conditioned on a pregnant woman affirmatively stating that she has decided to have an abortion.<sup>5</sup> However, under the Proposed Rule, a medical provider would not be allowed to provide a patient with information that may help them reach that decision, which will severely limit the number of women who could be helped by the provision of such a list. In addition, women who are pregnant, but do not state that they would like to have an

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<sup>2</sup> 42 CFR §59.5(a)(5)

<sup>3</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

<sup>4</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

<sup>5</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25518.

abortion, may only be presented with a list of referrals and providers who do not provide abortion services, further denying them the information they would need to make appropriate medical decisions in line with their rights. Second, the Proposed Rule will tie the hands of providers in their ability to make those lists useful for patients or identify the specific care they might find at providers outside of Title X.<sup>6</sup>

These requirements will result in the denial of necessary medical information to women and impede their ability to exercise their fundamental human rights (*see* Section II below). Furthermore, these requirements will force medical providers to withhold information from patients in violation of medical ethics. The American Medical Association has plainly stated that “withholding pertinent medical information from patients...creates a conflict between the physician’s obligation to promote patient welfare and respect patient autonomy,” and that “withholding information without the patient’s knowledge or consent is ethically unacceptable.”<sup>7</sup> Similarly, the American College of Obstetricians and Gynecologists has stated that all providers (even those personally opposed to abortion), must provide patients “accurate and unbiased information about her medical options and make appropriate referrals.”<sup>8</sup> Article 11 of the Declaration on Human Rights Defenders provides that professionals who “can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.”<sup>9</sup>

These ethical requirements are grounded in what doctors know—limiting access to abortion, including through the repression of information about where safe abortion services may be accessed—does not affect abortion rates, but does adversely affect the number of unsafe abortions and the rate of maternal mortality.<sup>10</sup> For example, one medical organization has found that “not responding to requests for termination of pregnancy means recognising that women and girls may have to opt for potentially unsafe alternatives to address their need—this is unacceptable for a medical organisation.”<sup>11</sup>

As the U.S. Supreme Court recently pointed out in its decision in *National Institute of Family and Life Advocates v. Becerra*, content-based regulations on professional speech “pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.”<sup>12</sup> The Court further noted that in the case of medical professionals, “doctors help

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<sup>6</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25518.

<sup>7</sup> American Medical Association, *Code of Medical Ethics Opinion 2.1.3 - Withholding Information from Patients*, (2016).

<sup>8</sup> American College of Obstetricians and Gynecologists, *Informed consent, Committee Opinion No. 439*, 114 *Obstetrics & Gynecology* 401, 2009. This opinion was reaffirmed in 2015.

<sup>9</sup> United Nations General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

<sup>10</sup> World Health Organization, *Women and girls continue to be at risk of unsafe abortion* (Sept. 28, 2017).

<sup>11</sup> Doctors Without Borders, *Abortion Policy Summary*, <https://www.msf.org.za/work-with-us/work-field/abortion-policy>,

<sup>12</sup> *Nat'l Inst. of Family & Life Advocates v. Becerra*, No. 16-1140, slip op. at 12 (U.S. Jun. 26, 2018), *citing* *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994).

patients make deeply personal decisions, and their candor is crucial.”<sup>13</sup> The Proposed Rule plainly aims to suppress speech about an issue that the Administration has made clear it is opposed to, and interfere in the ability of medical providers to support their patients in making medical decisions through the provision of complete information about their options.

## **II. The Proposed Rule Would Deny Women Access to Information and Services in Violation of their Rights**

Access to abortion is a fundamental right protected under the U.S. Constitution, both as a measure of domestic law and international law. Since its decision in *Roe v. Wade*, and as confirmed in *Planned Parenthood v. Casey* and *Whole Women’s Health v. Hellerstedt*, the U.S. Supreme Court has found that the government may not enact measures that impose an undue burden on access to abortion services. Human rights obligations binding on the United States protect access to abortion under a multitude of rights—including the rights to privacy, life, health, and the right to be free from discrimination, from torture, cruel, inhuman or degrading treatment.<sup>14</sup> The realization of these rights relies on their accessibility, including through education and information about reproductive options.<sup>15</sup> The Special Rapporteur on the right to health has found that the:

realization of the right to health requires the removal of barriers that interfere with individual decision-making on health-related issues and with access to health services, education and information, in particular on health condition that only affect women and girls. In cases where a barrier is created by a criminal law or *other legal restriction*, it is the obligation of the State to remove it.<sup>16</sup>

The implementation of the Proposed Rule no doubt constitutes such a prohibited “other legal restriction.” As discussed above, and in comments from other organizations, the Proposed Rule will enact significant barriers for women seeking family planning and other reproductive health services, including information as to where safe abortion services can be obtained. As a result, the Proposed Rule would run afoul of the U.S. Government’s obligations to ensure women’s human rights.

## **III. The Proposed Rule Would Impose Unlawful and Impermissible Limits on Abortion-Related Speech in Violation of Free Speech Protections**

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<sup>13</sup> Nat’l Inst. of Family & Life Advocates v. Becerra, No. 16-1140, slip op. at 12 (U.S. Jun. 26, 2018), citing *Wollschlaeger v. Governor of Florida*, 848, F.3d 1293, 1328 (2017).

<sup>14</sup> Office of the High Commissioner for Human Rights, *Abortion*, [https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_Abortion\\_WEB.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf).

<sup>15</sup> Human Rights Comm., *Draft General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life* (Jul. 2017). See also Human Rights Comm., *Concluding observations on the third period report of San Marino*, ¶ 15, U.N. Doc. CCPR/C/SMR/CO/3 (Dec. 3, 2015); Human Rights Comm., *Concluding observations on the fifth periodic report of Sri Lanka*, ¶ 10, U.N. Doc. CCPR/C/LKA/CO/5 (Nov. 21, 2014); Human Rights Comm., *Concluding observations on the situation of civil and political rights in Equatorial Guinea*, ¶ 9, U.N. Doc. CCPR/CO/79/GNQ (Aug. 13, 2004).

<sup>16</sup> United Nations General Assembly, Interim report of the Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/66/254 (Aug. 3, 2011).

As a part of U.S. law, international law directly weighs on the legality of the Proposed Rule.<sup>17</sup> In the 27 years since *Rust v. Sullivan*, international human rights obligations to protect free speech, by which the United States is bound, have become increasingly defined. The Proposed Rule, like U.S. abortion restrictions on foreign assistance including the Global Gag Rule,<sup>18</sup> violates U.S. obligations under international law to protect free speech.

The freedom of speech, which protects the right to seek, receive, and impart information, is among the most fundamental human rights.<sup>19</sup> Protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), the freedom of speech cannot be abrogated by the United States unless restrictions pass a strict three-part test. The ICCPR requires that any restrictions on speech: (1) are provided by law; (2) have a legitimate aim; and (3) are necessary and proportionate to achieve that aim.<sup>20</sup> The Proposed Rule fails each prong of this test and thereby unlawfully restricts free speech.

- A. *The Proposed Rule contains broad, vague, and contradictory provisions that allow unfettered discretion in the Rule's application and do not permit medical providers to meaningfully regulate their conduct.*

For a restriction to be adequately “provided by law,” the Human Rights Committee has explained that it must: (i) be accessible to the public; (ii) be formulated with precise language that allows individuals to regulate their conduct; and (iii) not allow “unfettered discretion” to those charged with its execution. The Proposed Rule as formulated does not comport with these criteria.

The precise language requirement means that individuals must know which of their conduct is allowed and which is prohibited.<sup>21</sup> In contrast, starting with the preamble, the Proposed Rule contains broad provisions that cause serious confusion and will not allow Title X grantees to regulate their conduct. On the one hand, the Proposed Rule's preamble provides that, “a doctor, though not required to do so, would be permitted to provide nondirective counseling on abortion.”<sup>22</sup> On the other hand, the operative language of the Proposed Rule contains no specifications related to the provision of such counseling, and instead is rife with broad prohibitions on the speech of *all medical providers*, including

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<sup>17</sup> U.S. CONST. art. VI, cl. 2. *See also* The Paquete Habana, 175 U.S. 677, 700 (1900).

<sup>18</sup> GLOBAL JUSTICE CTR., U.S. ABORTION RESTRICTIONS ON FOREIGN AID AND THEIR IMPACT ON FREE SPEECH AND FREE ASSOCIATION (2018), [http://globaljusticecenter.net/files/Brief.US\\_Abortion\\_Restrictions.pdf](http://globaljusticecenter.net/files/Brief.US_Abortion_Restrictions.pdf).

<sup>19</sup> Human Rights Comm., General Comment No. 34 on Article 19: Freedoms of Expression and Opinion, ¶ 11, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

<sup>20</sup> International Covenant on Civil and Political Rights arts. 19(3), Mar. 23, 1976, 999 U.N.T.S. 171.

<sup>21</sup> Human Rights Comm., General Comment No. 34, ¶¶ 24-25.

<sup>22</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25518 (emphasis added).

to “not provide, promote, refer for, support, or present”<sup>23</sup> or to “not encourage, promote or advocate”<sup>24</sup> for abortion as a method of family planning.

Other vague and undefined terms include prohibitions on: the dissemination of any materials that might in any way “promote a favorable attitude toward abortion”<sup>25</sup>; the taking of any “other affirmative action to assist a patient to secure” an abortion<sup>26</sup>; or the use of permitted referrals for prenatal and emergency care as “indirect means of encouraging or promoting abortion as a method of family planning.”<sup>27</sup> Although each of these prohibitions seeks to establish parameters around the conduct and speech of Title X providers, key terms such as “any other affirmative action,” “indirect means,” and what constitutes a “favorable attitude towards abortion” are wholly undefined in the Proposed Rule.

The language cited in this comment is only a representative sample of the vague, broad, and undefined language in the Proposed Rule. However, the consequences are clear—the lack of clarity in the terms utilized in the Proposed Rule, coupled with potentially contradictory provisions—will prevent providers from understanding whether they can provide abortion counseling and what activities are prohibited by the rule, and they will therefore be unable to appropriately regulate their conduct.

Furthermore, the Proposed Rule’s requirements mandating physical and financial separation also raise significant concerns regarding the government’s unfettered discretion in enforcing the regulation. The requirement that speech restrictions not allow for unfettered discretion reflects the reality that laws whose limits are vague and undefined invite arbitrary or expansive enforcement by officials beyond their original intention.<sup>28</sup> Rather than delineate clear criteria that would meet the requirements of physical and financial separation, the Proposed Rule includes a list of factors that might potentially provide the Secretary of Health and Human Services with satisfactory assurance that a Title X project has “objective integrity and independence from prohibited activities.”<sup>29</sup> Yet this requirement is in no way objective because it depends upon the Secretary’s interpretation at any given time, which is only made more concerning by HHS’s stated an intention to “to take a case-by-case approach in order to ensure program integrity.”<sup>30</sup> Nor do these requirements establish any kind of discernible standard for grantees to follow. For example, the list of factors provided is not inclusive,<sup>31</sup> and the text of the Proposed Rule provides no examples to help in its interpretation. HHS also seeks through this

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<sup>23</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25530.

<sup>24</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

<sup>25</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

<sup>26</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

<sup>27</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

<sup>28</sup> Center for Law and Democracy, *Restriction Freedom of Expression: Standards and Principles: Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression* (2010).

<sup>29</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

<sup>30</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25519.

<sup>31</sup> “Factors relevant to this determination shall include.” Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

rulemaking comments on whether “additional factors should be considered,”<sup>32</sup> so other criteria could be added into the final rule without meaningful opportunity for comment from groups that might be affected by those added criteria.<sup>33</sup> Each of these provisions individually, and certainly in the aggregate, raises serious concerns over HHS’s unfettered discretion in the implementation and enforcement of the Proposed Rule.

*B. The administration’s asserted interest in regulatory compliance does not provide a permissible basis on which to restrict free speech.*

In order for a restriction on free speech to be valid, it must pursue a legitimate aim. The ICCPR clearly defines what are considered legitimate aims: protecting the rights of others, national security, public order, public health or public morals.<sup>34</sup>

The Proposed Rule provides that its stated aim is to “ensure compliance with, and enhance implementation of, the statutory requirement that none of the funds appropriated for Title X may be used in programs where abortion is a method of family planning and related statutory requirements.” Such an interest in regulatory compliance pursues none of the legitimate aims permitted by the ICCPR. By contrast, limiting access to abortion services impermissibly violates women’s fundamental human rights<sup>35</sup> and increases rates of unsafe abortion and maternal mortality,<sup>36</sup> resulting in negative public health outcomes. Furthermore, the sweeping prohibition on activities that “directly or indirectly facilitate, promote or encourage abortion in any way”<sup>37</sup> limits democratic debate and withholds public information of legitimate public interest—*prima facie* violations of the freedom of speech.<sup>38</sup>

*C. The Proposed Rule’s broad and onerous requirements are neither necessary nor proportionate to achieve a legitimate aim.*

Even if a legitimate aim is established (see Section III(B) above), a state restricting speech must prove that there are no less intrusive means by which to achieve that aim—or in other words that the means are necessary and proportionate. However, there is nothing necessary or proportionate about the requirements of the Proposed Rule. In fact, federal laws already prohibit federal funding from being

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<sup>32</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25519.

<sup>33</sup> It is also likely the addition of such new criteria without comment would not suffice the “logical outgrowth test” required of federal rulemaking.

<sup>34</sup> International Covenant on Civil and Political Rights art. 19(3).

<sup>35</sup> Human Rights Comm., Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 121st Sess., ¶ 9 (July 2017).

<sup>36</sup> *Women and Girls Continue to be at Risk of Unsafe Abortion*, WORLD HEALTH ORG. (Sept. 28, 2017), [http://www.who.int/reproductivehealth/topics/unsafe\\_abortion/abortion-safety-estimates/en/](http://www.who.int/reproductivehealth/topics/unsafe_abortion/abortion-safety-estimates/en/); *Abortion Rates Declined Significantly in the Developed World Between 1990 and 2014; Rates in the Developing World Have Remained Mostly Unchanged*, GUTTMACHER INST. (May 11, 2016), <https://www.guttmacher.org/news-release/2016/abortion-rates-declined-significantly-developed-world-between-1990-and-2014>.

<sup>37</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25506.

<sup>38</sup> Human Rights Comm., General Comment No. 34, ¶¶ 28, 30.

used to provide safe abortion services except in limited circumstances<sup>39</sup>—meaning that at its best, the Proposed Rule is a superfluous and unnecessary government regulation.

First, the Proposed Rule’s requirements of physical and financial separation will only serve to require Title X programs to spend their limited resources to comply with superfluous requirements. For several decades, HHS has interpreted the Title X statute to require projects to maintain financial separation between Title X activities and abortion services. However, with the Proposed Rule, HHS would require providers to establish a “wall of separation” between Title X activities and a list of prohibited activities.<sup>40</sup> The new requirements include, and potentially only at a minimum, that providers must maintain separate accounting records, facilities (including treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites), personnel, health care records, and signs and other forms of identification.<sup>41</sup> Imposing these oppressive conditions on providers is unwarranted, unnecessary in light of the existing requirements of financial separation and guaranteed to interrupt patient care.

In addition, the burdensome and rigorous restrictions that would be imposed by the Proposed Rule are by no means proportionate, an analysis that compares the harm inflicted by restricting speech against the identified interest protected.<sup>42</sup>

As we know from the impact of the Global Gag Rule, the Proposed Rule’s international counterpart, the Proposed Rule will not decrease abortions, but will instead deprive entire communities of health care.<sup>43</sup> Through the combination of the loss of funding to qualified and trusted organizations, costly compliance burdens for those who choose to comply, and the chilling effect and self-censorship confusion and overly cautious interpretation, the Global Gag Rule has had a devastating impact. Entire communities have seen their clinics close or have experienced drastic reductions in programs and services, including a loss of access to contraceptives.<sup>44</sup> This raises the risk for unintended pregnancies and HIV/AIDS. Furthermore, rates of unsafe abortion increase as family planning and contraceptive services become more difficult to access as a result of the Global Gag Rule, and maternal mortality rates rise as women die from unsafe abortions and other maternal health complications.<sup>45</sup> Significantly, restricting access to or information about safe abortion services is not an effective method of reducing

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<sup>39</sup> See, e.g., Consolidated Appropriations Act 2018, P.L. 115-141, div. H, tit. V, §§ 506-07. This is not intended to reinforce the legality of the Hyde Amendment which itself violates U.S. obligations under international human rights law.

<sup>40</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25506.

<sup>41</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

<sup>42</sup> *Open Door and Dublin Well Woman v. Ireland*, 64/1991/316/387-388, Eur. Ct. H.R. ¶¶ 70-77 (Sept. 23, 1992).

<sup>43</sup> Population Action International, *Access Denied: U.S. Restrictions on International Family Planning, Executive Summary* (Sept. 2003).

<sup>44</sup> Population Action International, *Access Denied: Nigeria, Preliminary Impacts of Trump’s Expanded Global Gag Rule* (Mar. 7, 2018); Population Action International, *Access Denied: The Impact of the Global Gag Rule in Kenya* (2006); Population Action International, *Access Denied: The Impact of the Global Gag Rule in Tanzania* (2005); Population Action International, *Access Denied: The Impact of the Global Gag Rule in Nepal* (2006); and Population Action International, *Access Denied: The Impact of the Global Gag Rule in Ethiopia* (2005).

<sup>45</sup> Population Action International, *The Global Gag Rule and Maternal Deaths Due to Unsafe Abortion* (2006).

the occurrence of abortions. In sharp contrast, several studies have shown that imposition of the Global Gag Rule actually leads to an increase in unintended pregnancies and abortion rates.<sup>46</sup>

The Proposed Rule would likely lead to the same consequences in the United States because many patients would lose access to trusted reproductive health providers, like Planned Parenthood. There are 38 million women in the United States in need of contraceptives and Planned Parenthood serves 41% of all Title X contraceptive clients.<sup>47</sup> Evidence of the impact of the Global Gag Rule shows us that other providers are not able to absorb the increase in reproductive health care patients that results when family planning providers must close or cut services.

Title X was enacted with the purpose of helping “men, women, and adolescents make healthy and fully informed decisions about starting a family and determin[ing] the number and spacing of children.”<sup>48</sup> Furthermore, the Proposed Rule itself provides that “[f]amily planning, as supported under this subpart, should reduce the incidence of abortion.”<sup>49</sup> As this data demonstrates, the harm caused by the Proposed Rule would not only far exceed the interests it purportedly serves, but would also undermine the purpose and objectives of the Title X program itself by decreasing access to family planning and increasing rates of abortion.

Finally, HHS seeks comment on whether the requirements of the Proposed Rule should be imposed on agencies that have referral relationships with Title X-funded health centers.<sup>50</sup> There is no need or basis upon which to extend these requirements beyond the Title X program. Community partners and referral providers are not Title X-funded entities and do not come within Title X’s reach. These referral relationships and networks are critical in ensuring that low-income, uninsured, or underinsured patients have access to the full range of care they need from accessible providers across the safety net. Imposing Title X requirements on organizations that don’t receive any Title X dollars or have any responsibility for Title X projects would be unlawful and would only serve to cut off Title X providers and their patients from referrals. It would have a drastic impact on the ability of Title X providers to secure referral arrangements to the detriment of patients’ health and well-being. The imposition of restrictions on those who don’t even receive Title X funds is the very definition of unnecessary and disproportionate.

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<sup>46</sup> ANN M. STARRS ET AL., ACCELERATE PROGRESS—SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS FOR ALL: REPORT OF THE GUTTMACHER-LANCET COMMISSION 16 (2018) (“Evidence shows that the policy has even had the opposite effect intended in these regions, leading to an increase in abortions and unintended pregnancies.”); Jeffrey B. Bingenheimer & Patty Skuster, Commentary, *The Forseeable Harms of Trump’s Global Gag Rule*, 48 STUD. FAMILY PLANNING 279 (2017); Kelly M. Jones, *Contraceptive Supply and Fertility Outcomes: Evidence from Ghana*, 64 ECON. DEV. CULTURAL CHANGE 31 (2015); see also *Fact Sheet: Induced Abortion Worldwide*, GUTTMACHER INST. (Mar. 2018), [https://www.guttmacher.org/sites/default/files/factsheet/fb\\_jaw.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb_jaw.pdf); Gilda Sedgh et al., *Abortion Incidence Between 1990 and 2014: Global, Regional, and Subregional Levels and Trends*, 388 LANCET 258, 263 (2016).

<sup>47</sup> Guttmacher Institute, *Publicly Funded Contraceptive Services at U.S. Clinics, 2015* (Apr. 2017).

<sup>48</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25502.

<sup>49</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25513.

<sup>50</sup> Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25514.



As this comment demonstrates, the Proposed Rule constitutes an impermissible restriction on free speech. Moreover, the consequences of the Proposed Rule are clear: women served by Title X will be denied access to abortion services in violation of their fundamental rights under the U.S. Constitution and international human rights law. Such denials have been found to violate the right to be free from torture and cruel, inhuman and degrading treatment, as well as the rights to life, health, and non-discrimination. Compliance with these obligations is not discretionary—it is mandatory. Domestic law can never be used as an excuse for failing to comply with international treaty obligations.<sup>51</sup> Foregoing implementation of the Proposed Rule altogether is the only way to avoid a direct confrontation with the freedom of speech, a right enshrined in the very first amendment to the U.S. Constitution, and women’s fundamental rights.

For these reasons I urge you to withdraw the Proposed Rule which unlawfully restricts the freedom of speech and access to safe abortion services. The Global Justice Center appreciates the opportunity to comment on the Proposed Rule, “Compliance with Statutory Program Integrity Requirements.” If you require additional information about the issues raised in this comment, please contact Akila Radhakrishnan at [akila@globaljusticecenter.net](mailto:akila@globaljusticecenter.net).

Sincerely,

Akila Radhakrishnan  
President  
Global Justice Center

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<sup>51</sup> Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331; LaGrand (Ger. v. U.S.), 2001 I.C.J. 466 (June 27); Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12, ¶ 139 (Mar. 31) (“The rights guaranteed under the Vienna Convention [on Consular Relations] are treaty rights which the United States has undertaken to comply with in relation to the individual concerned, irrespective of the due process rights under United States constitutional law.”)