

United States Senate

WASHINGTON, DC 20510

November 13, 2020

The Honorable Alex M. Azar II
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20

RE: FAR Case 2018-002, Protecting Life in Global Health Assistance

Dear Secretary Azar and Secretary Pompeo:

We write to you today to submit comments in response to the proposal to amend the Federal Acquisition Regulation (FAR) rule from the Department of Defense (DoD), General Services Administration (GSA) and National Aeronautics and Space Administration (NASA) to implement the Protecting Life in Global Health Assistance policy, as published in the Federal Register on Monday, September 14. This rule would expand a longstanding policy of this administration that severely limits access to comprehensive health care and information to people around the world. The proposal that has been put forth would only further limit the rights of individuals around the world to control their own sexual and reproductive health.

Background

The Global Gag Rule (also known as the Mexico City Policy or Protecting Life in Global Health Assistance - PLGHA) has politicized the sexual and reproductive rights of individuals across the world since 1984. As previously applied to the International Family Planning account, this policy has been used by Republican presidents to restrict how vital health programs are allowed to operate and the information and services that can be provided to program beneficiaries. While this has been a devastating policy under previous administrations, the Trump administration's 2017 decision to dramatically expand the Global Gag Rule to all U.S. global health assistance has magnified its destructive consequences across U.S. foreign assistance. In March 2019, the Department of State announced yet another disturbing and unprecedented expansion of the policy to restrict sub-recipients of Global Gag Rule-compliant organizations.¹ Now, the Trump administration seeks to enforce the Global Gag Rule beyond global health grants and cooperative agreements. The proposed rule would, for the first time, expand the Global Gag Rule to all global health contracts, impacting foreign contractors and subcontractors. This would be an extraordinary expansion of a policy that has already hurt women and families around the world.

For the reasons detailed below, we oppose the expansion of the Global Gag Rule and the changes contained within the proposed rule, FAR Case 2018-002, released on September 14, 2020, by your administration. We urge you against finalizing this rule.

¹ The Kaiser Family Foundation. The Mexico City Policy: An Explainer. June 29, 2020. <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>

Service Delivery Disruptions

Research and evidence have demonstrated that the Global Gag Rule significantly decreases the ability of individuals to access a range of health information and services. According to the administration's own report on the impact of the Global Gag Rule, the policy has caused some clinics to experience a "gap or disruption in delivery" or "extra costs" and "delayed implementation of activities for several months."² The report further documents serious disruptions in programming, including communities that were cut off from U.S. family planning assistance when a single-family planning organization was forced out of U.S. global health programs due to the policy and no replacement implementing partners were found. As this demonstrates, the burden of this policy is disproportionately placed on those who already face systemic barriers to care.³ To knowingly reduce care to the most vulnerable populations is a disturbing abdication of responsibilities that goes against longstanding U.S. global health policy goals.

The proposed rule to expand the policy to contracts, which are administered in all areas of global health, threatens to compound the serious harm already caused by the Global Gag Rule. The negative consequences of the policy will reverberate across many U.S. global health programs, including in family planning, maternal and child health, HIV/AIDS and other infectious diseases, nutrition and water and sanitation programs. We are deeply concerned that expanding the Global Gag Rule to contracts will result in additional delays, losses or gaps in critical health care programs.

Silencing Civil Society

The proposed rule threatens to drastically expand the damage already done to the U.S.'s relationships with civil society. The Global Gag Rule has already resulted in a "chilling effect," among implementing partners which has disrupted service provision, engagement and collaboration across coalitions seeking stronger health care systems. Following the announcement of the expanded Global Gag Rule, organizations reported that they had received little guidance from the U.S. government, leading to overreach in implementation and an overinterpretation of the policy's restrictions out of fear and uncertainty over compliance. As a result, organizations have self-censored the programs and information that they provide in an effort to ensure that their activities are not misconstrued by the administration. The unprecedented new expansion of the policy proposed in the rule is likely to again produce significant confusion resulting in reduced services, information and partnerships. This proposed rule will only exacerbate the damage that the existing policy has already inflicted.

² Department of State, *REVIEW OF THE IMPLEMENTATION OF THE PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE POLICY* (August 2020), <https://www.state.gov/wp-content/uploads/2020/08/PLGHA-2019-Review-Final-8.17.2020-508.pdf>.

³ CHANGE, *PRESCRIBING CHAOS IN GLOBAL HEALTH: THE GGR FROM 1984-2018* 5 (June 2018), available at http://www.genderhealth.org/files/uploads/change/publications/Prescribing_Chaos_in_Global_Health_full_report.pdf [hereinafter CHANGE, PRESCRIBING CHAOS].

Compliance Burden and Program Inefficiencies

Many of the estimated 253 foreign prime contractors that will be subject to this proposed rule, as well as untold numbers of subcontractors and U.S. contractors charged with compliance oversight of foreign subcontractors, have likely never been required to comply with the Global Gag Rule. As such, the proposed rule is likely to create significant new compliance burdens for these entities, nearly a fifth of which are small businesses. Every one of these staff hours and dollars that are being spent on the administration of and compliance with the policy as applied to these contracts are resources that are not being spent on providing vitally needed health care programming to help vulnerable communities. The added cost of compliance and other inefficiencies, which would be created by the proposed rule, represents a poor use of U.S. Government funds, which were appropriated with the intent of providing assistance to communities in need, not to pay for U.S. government-imposed administrative costs.

Restrictions During the COVID-19 Pandemic

Beyond the disruptions already caused by the Global Gag Rule, the COVID-19 pandemic is wreaking havoc on vulnerable health systems and exposing urgent gaps in care. Health workers at all levels continue to have urgent needs for personal protective equipment, and providers must adapt clinic and outreach services to adhere to social distancing guidelines and ensure infection prevention and control measures are followed to safely serve patients. As the pandemic continues unabated, partners on the ground report pandemic-related disruptions to reproductive and maternal health, child health and immunizations, nutrition programs and efforts to address epidemics like HIV/AIDS, tuberculosis and malaria. Conservative estimates show that a 10 percent reduction in the availability of reproductive health services is likely to result in 49 million women having an unmet need for modern contraception and 15 million additional unintended pregnancies.⁴ These disruptions and restrictions on sexual and reproductive health care are further worsened by restrictive policies like the Global Gag Rule and the significant expansion proposed by this rule.

Questions For Response

With the concerns detailed above, we request responses to the following questions:

1. How was the potential impact of the proposed rule on existing services evaluated when crafting the rule? What metrics were used to evaluate the rule's impact?
2. How does the proposed rule fit into the broader global health strategy of integrating health care systems, and how will it impact the core global health strategic priorities of preventing maternal and child deaths, controlling the HIV/AIDS epidemic, and combating infectious diseases?
3. Have the Departments of State and HHS assessed how the burden of compliance will impact the resources available to implement programs? What is the estimated percentage of a contract that implementing partners should expect to direct towards compliance?

⁴<https://www.gutmacher.org/journals/ipsrh/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health>

Will State and HHS consider compliance efforts by implementing partners in accessing the viability of programs?

4. Which specific regions and types of programs will be impacted the most by the burdens imposed under the proposed rule?
5. Do some global health sectors rely more heavily on foreign contractors and subcontractors to achieve their programmatic objectives than others and are those contractors or subcontractors more or less likely to be engaged in restricted abortion-related activities with non-U.S. financing?
6. Have the Departments of State and HHS examined possible disruptions to COVID-19 response activities as a result of this expansion of the Global Gag Rule to global health contracts?
7. Were civil society organizations consulted in the crafting of this policy? If so, which organizations provided input and how was input evaluated by the respective departments?
8. Have the Departments of State and HHS consulted the evaluations from organizations outside of the U.S. government on the impact of the Global Gag Rule in its current form in crafting the proposed rule?
9. How many prime contractors and subcontractors do the Departments of State and HHS estimate will not comply with this proposed regulation? What plans are in place to replace any contractors who do not sign onto the policy?
10. How many prime contractors and subcontractors of the Departments of State and HHS have declined to participate in U.S. programming due to current policy?
11. Will the Departments of State and HHS track declinations of contracts that result from non-government organizations refusing to comply or unable to comply with the policy?
12. How will the Departments of State and HHS allocate resources to close any gaps in programs created by declinations? If disruptions in supply chains are detected, what steps will the Departments take to correct the problem?
13. How will the Departments of State and HHS work with existing partners to ensure requirements for compliance are understood? What if any additional resources will be available to these organizations to prepare them to comply with the rule?
14. Have the Departments of State and HHS examined how the compliance burden of the proposed Global Gag Rule expansion will direct resources, including monetary and staff time, away from emergency COVID-19 response activities supported by global health contracts? If not, and if the rule is implemented, how will the compliance burden of the rule be monitored and evaluated?
15. On May 18, 2020, the Government Accountability Office (GAO) released a report titled “Global Health Assistance: Awardees' Declinations of U.S. Planned Funding Due to Abortion-Related Restrictions,” which confirmed the devastating impact of the Global Gag Rule on health service provision. How were the report and the declinations documented used to craft this policy? If it was not consulted, why did the administration not take into account this analysis?

The proposed rule would extend an already dangerous policy that harms countless people around the world. The Global Gag Rule and this proposed expansion is a direct attack on sexual and reproductive health and rights for women, girls, LGBTQI+ individuals and other vulnerable

groups. We are deeply concerned that this administration has acknowledged the harm of this policy, yet continues to pursue it. In order to achieve our global health goals, we seek to ensure that all people are able to access comprehensive and accurate health care and information. Yet this proposed rule makes that impossible and will only exacerbate health inequalities across the globe. We look forward to your answers to our questions, and we strongly urge you to withdraw the proposed rule which will cause unmitigated harm to the world's most vulnerable people.

Sincerely,



Jeanne Shaheen
United States Senator

/s/ Kirsten Gillibrand

Kirsten Gillibrand
United States Senator

/s/ Robert Menendez

Robert Menendez
United States Senator

/s/ Sherrod Brown

Sherrod Brown
United States Senator

/s/ Angus S. King, Jr.

Angus S. King, Jr.
United States Senator

/s/ Ron Wyden

Ron Wyden
United States Senator

/s/ Benjamin L. Cardin

Benjamin L. Cardin
United States Senator

/s/ Richard J. Durbin

Richard J. Durbin
United States Senator

/s/ Tammy Baldwin

Tammy Baldwin
United States Senator

/s/ Mazie K. Hirono

Mazie K. Hirono
United States Senator

/s/ Richard Blumenthal

Richard Blumenthal
United States Senator

/s/ Tim Kaine

Tim Kaine
United States Senator

/s/ Patty Murray

Patty Murray
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator

/s/ Christopher A. Coons

Christopher A. Coons
United States Senator

/s/ Elizabeth Warren

Elizabeth Warren
United States Senator

/s/ Edward J. Markey

Edward J. Markey
United States Senator

/s/ Tom Udall

Tom Udall
United States Senator

/s/ Margaret Wood Hassan

Margaret Wood Hassan
United States Senator

/s/ Patrick Leahy

Patrick Leahy
United States Senator

/s/ Christopher S. Murphy

Christopher S. Murphy
United States Senator

/s/ Tammy Duckworth

Tammy Duckworth
United States Senator

/s/ Maria Cantwell

Maria Cantwell
United States Senator

/s/ Cory A. Booker

Cory A. Booker
United States Senator

/s/ Amy Klobuchar

Amy Klobuchar
United States Senator

/s/ Bernard Sanders

Bernard Sanders
United States Senator

/s/ Jack Reed

Jack Reed
United States Senator

/s/ Sheldon Whitehouse

Sheldon Whitehouse
United States Senator

/s/ Jacky Rosen

Jacky Rosen
United States Senator

/s/ Michael F. Bennett

Michael F. Bennett
United States Senator

/s/ Robert P. Casey, Jr.

Robert P. Casey, Jr.
United States Senator

/s/Tina Smith

Tina Smith
United States Senator

/s/ Gary C. Peters

Gary C. Peters
United States Senator

/s/ Jeff Merkley

Jeff Merkley
United States Senator

/s/ Mark R. Warner

Mark R. Warner
United States Senator