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Family Planning Program Under Title X of the Public Health Service Act

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SUMMARY

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Family Planning Program Under Title X of the Public Health Service Act

The federal government provides grants for family planning services through the Family Planning Program, Title X of the Public Health Service Act (PHSA; 42 U.S.C. §§300 to 300a-6). Title X, enacted in 1970, is the only domestic federal program devoted solely to family planning and related preventive health services. In 2017, Title X-funded clinics served 4 million clients.

Title X is administered through the Office of Population Affairs (OPA) in the Department of Health and Human Services (HHS). Although the authorization of appropriations for Title X ended in FY1985, funding for the program has continued through appropriations bills for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (Labor-HHS-Education).

Title X grantees can provide family planning services directly or subaward Title X monies to other public or nonprofit entities to provide services. In December 2016, OPA released a final rule to limit the criteria Title X grantees could use to restrict subawards by stating that "[n]o recipient making subawards for the provision of services as part of its Title X project may prohibit an entity from participating for reasons other than its ability to provide Title X services." On April 13, 2017, the President signed P.L. 115-23, which nullified the rule under the Congressional Review Act.

Federal law (42 U.S.C. §300a-6) prohibits the use of Title X funds in programs in which abortion is a method of family planning. According to OPA, family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities. The abortion prohibition does not apply to all Title X grantees' activities, but applies only to their Title X project activities. Under current guidance, a grantee's abortion activities must be "separate and distinct" from its Title X project activities.

On June 1, 2018, HHS published a proposed rule that would prohibit Title X projects from making abortion referrals and would require "physical and financial separation" between Title X projects and abortion-related activities, among other changes to Title X regulations.

On September 28, 2018, the President signed the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019 (P.L. 115-245), which provides $286.5 million for Title X, the same as the FY2018 level. The FY2019 act continues previous years' requirements that Title X funds not be spent on abortions, that all pregnancy counseling be nondirective, and that funds not be spent on promoting or opposing any legislative proposal or candidate for public office. Grantees continue to be required to certify that they encourage *family participation* when minors seek family planning services and to certify that they counsel minors on how to resist attempted coercion into sexual activity. The appropriations law also clarifies that family planning providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.

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Title X Program Administration and Grants

The federal government provides grants for family planning services through the Family Planning Program, Title X of the Public Health Service Act (PHSA; 42 U.S.C. §§300 to 300a-6). Enacted in 1970, Title X is the only domestic federal program devoted solely to family planning and related preventive health services. By law, Title X clients' participation in family planning services is voluntary.[1]

The Title X program is not the only federal program that funds family planning services. Other domestic programs that finance family planning, among their other services, include Medicaid, the federal Health Center program, the Maternal and Child Health Services Block Grant, the Social Services Block Grant, and Temporary Assistance for Needy Families. In FY2015, for example, Medicaid accounted for 75% of U.S. public family planning expenditures (including federal, state, and local government spending). In comparison, Title X accounted for 10%.[2]

Administration

Title X is administered by the Office of Population Affairs (OPA) under the Office of the Assistant Secretary for Health in the U.S. Department of Health and Human Services (HHS). Although the program is administered through OPA, funding for Title X activities is provided through the Health Resources and Services Administration (HRSA) in HHS. Authorization of appropriations for Title X expired at the end of FY1985, but the program has continued to be funded through appropriations bills for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (Labor-HHS-Education).

OPA administers three types of project grants under Title X: (1) family planning services;[3] (2) family planning personnel training;[4] and (3) family planning service delivery improvement research.[5] The three types of project grants are discussed below.

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[1] 42 U.S.C. §300a-5 states, "The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this title (whether by grant or contract) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information."

[2] Kinsey Hasstedt, Adam Sonfield, and Rachel Benson Gold, *Public Funding for Family Planning and Abortion Services, FY1980-2015*, Guttmacher Institute, April 2017, https://www.guttmacher.org/report/public-funding-family-planning-abortion-services-fy-1980-2015. (The Guttmacher Institute was originally, but is no longer, part of the Planned Parenthood Federation of America.) More background is in Institute of Medicine (IOM), "Non-Title X Family Planning Funding Sources," in *A Review of the HHS Family Planning Program: Mission, Management, and Measurement of Results*, ed. Adrienne Stith Butler and Ellen Wright Clayton (Washington: The National Academies Press, 2009), pp. 117-121, http://www.nap.edu/catalog/12585/a-review-of-the-hhs-family-planning-program-mission-management.

[3] General Service Administration (GSA), *Assistance Listings: Family Planning Services*, Program number 93.217, https://beta.sam.gov/fal/44fc3928b1aeea872df90344684896fb/view.

[4] GSA, *Assistance Listings: Family Planning Personnel Training*, Program number 93.260, https://beta.sam.gov/fal/56d42e06dc5344b0668adc0c75143a6b/view.

[5] GSA, *Assistance Listings: Family Planning Service Delivery Improvement Research Grants*, Program number 93.974, https://beta.sam.gov/fal/1ef4e48c545163457c9f2bd0fc52e51c/view.

Family Planning Services Grants

Services

In FY2017, OPA used approximately 90% of Title X funds for clinical services.[6] Family planning services grants fund family planning and related preventive health services, such as contraceptive services; natural family planning methods; infertility services; adolescent services; breast and cervical cancer screening and prevention; sexually transmitted disease (STD) (including human immunodeficiency virus [HIV]) prevention education, counseling, testing, and referral; preconception health services; and reproductive life plan counseling .[7] These services must be provided "without coercion and with respect for the privacy, dignity, social, and religious beliefs of the individuals being served."[8]

Although females make up the majority of Title X clients, services offered to males include condoms, education and counseling, STD testing and treatment, HIV testing, and, in some cases, vasectomy services.[9]

Client Charges

Priority for services is given to persons from low-income families, who may not be charged for care.[10] Clients from families with income between 100% and 250% of the federal poverty guidelines are charged on a sliding scale based on their ability to pay. Clients from families with income higher than 250% of the federal poverty guidelines are charged fees designed to recover the reasonable cost of providing services. If a third party (such as a state Medicaid program or a private health insurance plan) is authorized or legally obligated to pay for a client's services, all reasonable efforts must be made to obtain the third-party payment without discounts.[11]

Client Characteristics

In 2017, Title X-funded clinics served 4.004 million clients, primarily low-income women and adolescents.[12] Of those clients, 12% were male, 67% had incomes at or below the federal poverty

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[6] U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), *Fiscal Year 2018 Justification of Estimates for Appropriations Committees*, p. 289, https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-2018.pdf.

[7] Title X clinical guidelines are laid out in Loretta Gavin, Susan Moskosky, and Marion Carter, et al., "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs," *Morbidity and Mortality Weekly Report*, vol. 63, no. RR-4 (April 25, 2014), pp. 1-29, http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm. To review updates to the Title X clinical guidelines, see HHS, OPA, *Quality Family Planning*, https://www.hhs.gov/opa/guidelines/clinical-guidelines/quality-family-planning/index.html.

[8] GSA, *Assistance Listings*, *Family Planning Services*, Program number 93.217, https://beta.sam.gov/fal/44fc3928b1aeea872df90344684896fb/view. See also 42 C.F.R. §59.5.

[9] HHS, OPA, *Title X Male Services*, https://www.hhs.gov/opa/title-x-family-planning/preventive-services/title-x-male-services/index.html.

[10] 42 C.F.R. §59.2 defines *low-income family* as having income at or below 100% of the federal poverty guidelines. The regulation states that "'[l]ow-income family' also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources."

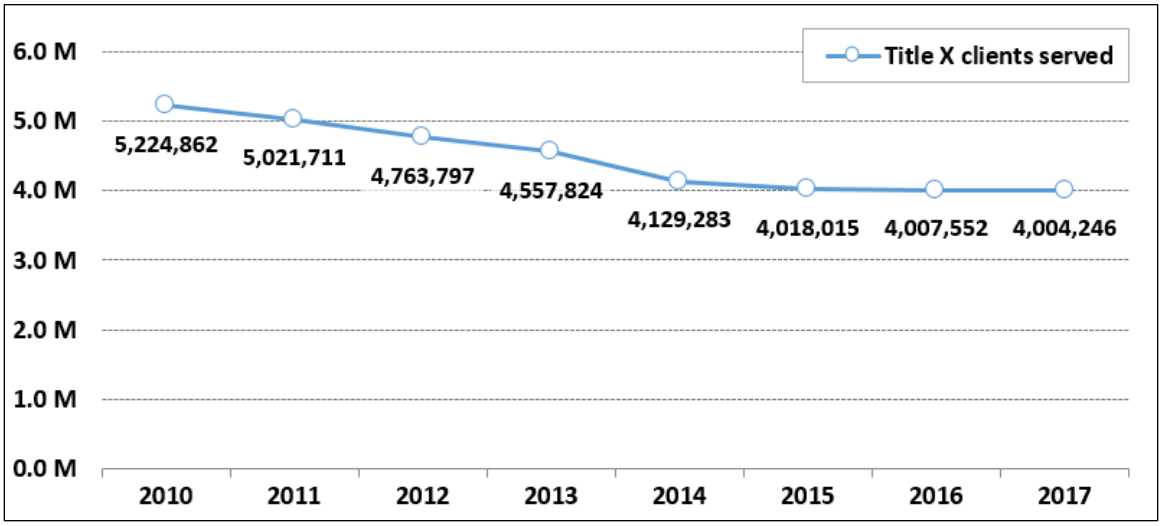
[11] 42 C.F.R. §59.5.

[12] Christina Fowler, Julia Gable, Jiantong Wang, and Beth Lasater, *Family Planning Annual Report: 2017 National Summary*, RTI International, Research Triangle Park, NC, August 2018, pp. 8-9, https://www.hhs.gov/opa/sites/default/

guidelines, and 87% had incomes at or below 200% of the federal poverty guidelines.[13] An earlier survey found that for 61% of female clients, Title X clinics were their "usual" or only regular source of health care.[14] In 2017, 42% of Title X clients were uninsured.[15]

The number of Title X clients served in 2017 was 0.08% lower than in 2016 (when there were 4.008 million clients). The 2017 client count was 23% lower than in 2010 (when there were 5.225 million clients).[16] **Figure 1** shows the number of Title X clients each year from 2010 to 2017.

Figure 1. Number of Title X Family Planning Clients Served, 2010-2017



Source: Figure prepared by CRS, using data from Christina Fowler, Julia Gable, Jiantong Wang, and Beth Lasater, *Family Planning Annual Report: 2017 National Summary,* RTI International, Research Triangle Park, NC, August 2018, Exhibit A-2a, p. A-6, https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2017-national-summary.pdf.

The *Family Planning Annual Report* and the HRSA FY2017 *Budget Justification* suggested several reasons for grantees' decreased capacity to serve clients,[17] including

- clinic closures or clinics no longer participating in Title X;
- staffing shortages for family planning projects due to difficulties in provider recruitment and retention; and

files/title-x-fpar-2017-national-summary.pdf. To view a map, by county, of the number of female Title X contraceptive clients served in 2015, see Jennifer J. Frost, Lori Frohwirth, Nakeisha Blades et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, Guttmacher Institute, April 2017, https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015. Click "Go to state and county maps," then choose "# of clients served at Title X-funded clinics" from the pull-down menu.

[13] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. 9, 21-23.

[14] Jennifer J. Frost, *U.S. Women's Use of Sexual and Reproductive Health Services: Trends, Sources of Care and Factors Associated with Use, 1995–2010*, Guttmacher Institute, May 2013, p. 1 https://www.guttmacher.org/report/us-womens-use-sexual-and-reproductive-health-services-trends-sources-care-and-factors.

[15] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, p. 21.

[16] Ibid., p. A-6.

[17] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. C-2 and C-10. HRSA, *Fiscal Year 2017 Justification of Estimates for Appropriations Committees*, p. 391, https://www.hrsa.gov/sites/default/files/about/budget/budgetjustification2017.pdf.

- increased unit cost of providing services and upfront costs for infrastructure improvements (such as purchasing new health information technology and entering new contracts with insurers);

Grantees also suggested several potential reasons for a decrease in demand,[18] including

- newly insured clients choosing to seek care from other non-Title X providers;
- increased use of long-acting reversible contraception (LARC), which could reduce the frequency of client visits in the long run, compared with some other types of contraception (such as oral contraceptives that require refills);[19] and
- clinical guideline changes, such as Pap tests now being recommended every three years instead of annually.[20]

Grantees and Clinics

In 2017, there were 89 Title X family planning services grantees. These grantees included 47 state, local, and territorial health departments and 42 nonprofit organizations, such as community health agencies, family planning councils, and Planned Parenthood Federation of America (Planned Parenthood; PPFA) affiliates.[21]

Title X grantees can provide family planning services directly or subaward Title X monies to other public or nonprofit entities to provide services. Although there is no fixed matching amount required for grants, regulations specify that no Title X projects may be fully supported by Title X funds.[22] In 2017, Title X provided services through 3,858 clinics located in the 50 states, the District of Columbia, and eight U.S. territories and Freely Associated States.[23]

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[18] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. C-2 and C-10. HRSA, *Fiscal Year 2017 Justification of Estimates for Appropriations Committees*, p. 392. See also Jennifer Rogers, Halima Ahmadi-Montecalvo, and Julia Fantacone, et al., *The Affordable Care Act and Title X Family Planning Services: How the Changing Health Care Landscape Has Affected Service Use and Billing Practices*, Altarum Institute and The Urban Institute for HHS OPA, 2017, pp. 3 and 21, https://www.fpntc.org/sites/default/files/resources/altarum_aca_title_x_2014.pdf.

[19] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. A-22, C-2, C-10.

[20] Loretta Gavin et al., "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs," *Morbidity and Mortality Weekly Report*, vol. 63, no. RR-4 (April 25, 2014), p. 20. HHS, OPA, *Clinical Guidelines*, https://www.hhs.gov/opa/guidelines/clinical-guidelines/index.html. Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. C-2 and C-10. Christina I. Fowler et al., "Trends in Cervical Cancer Screening in Title X-Funded Health Centers—United States, 2005–2015," *Morbidity and Mortality Weekly Report (MMWR)*, vol. 66, no. 37 (September 22, 2017), https://www.cdc.gov/mmwr/volumes/66/wr/mm6637a4.htm. See also U.S. Preventive Services Task Force, *Cervical Cancer: Screening: Recommendation Summary*, August 2018, https://www.uspreventiveservicestaskforce.org/Page/Document/UpdateSummaryFinal/cervical-cancer-screening2.

[21] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, p. 7. A directory of Title X grantees is at HHS, OPA, *Title X Grantees*, https://www.hhs.gov/opa/title-x-family-planning/title-x-grantees/index.html.

[22] 42 C.F.R. §59.7(c).

[23] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, p. 7. Directories of Title X grantees, subawardees, and clinic sites are at https://www.hhs.gov/opa/title-x-family-planning/title-x-grantees/index.html and https://www.opa-fpclinicdb.com. For a map that provides the number of Title X clinics by county in 2015, see Frost et al., *Publicly Funded Contraceptive Services at U.S. Clinics, 2015*, https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015. Click "Go to state and county maps," then choose "# of Title X-funded clinics" from the pull-down menu.

Family Planning Personnel Training Grants

Family planning personnel training grants are used to train staff and improve the use and career development of paraprofessionals.[24] Staff are trained through a Family Planning National Training Center and a National Clinical Training Center.[25] These programs have produced provider education resources, training tools, podcasts, and webinars on topics such as the Zika virus, caring for women with opioid use disorders, mandated child abuse reporting, human trafficking, and clinical efficiency, among other topics.[26]

Family Planning Service Delivery Improvement Research Grants

Family planning service delivery improvement research grants are used to conduct research studies with the goal of improving the service delivery of Title X projects.[27] Research funded by these grants includes research on integrating family planning services into STD clinic settings, protecting patient confidentiality, evaluating performance measures for contraceptive services, and evaluating Title X clinics' financial viability and sustainability.[28]

Funding

Title X is a discretionary program, meaning its funding is provided in and controlled by annual appropriations acts. It has received appropriations every year since the program started in FY1971.

Annual appropriations acts have also specified certain program guidelines, such as requiring all Title X pregnancy counseling to be nondirective and prohibiting the use of Title X funds for abortion. This section describes recent funding amounts and proposals.[29]

FY2019 Funding

On September 28, 2018, the President signed the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019 (P.L. 115-245). It provides $286.479 million for Title X in FY2019, the same as the FY2018 enacted level.[30] The FY2019 act continues previous years' provisions that Title X funds not be spent on abortions, among other requirements (see the text box below). The appropriations provision states that Title X funds "shall not be expended for abortions" and does not specify any

[24] *Assistance Listings, Family Planning Personnel Training,* Program number 93.260, https://beta.sam.gov/fal/56d42e06dc5344b0668adc0c75143a6b/view.

[25] HHS, OPA, *National Training Centers*, https://www.hhs.gov/opa/title-x-family-planning/training-and-resources/national-training-centers/index.html.

[26] For more information, see Family Planning National Training Center, https://fpntc.org. National Clinical Training Center for Family Planning, http://www.ctcfp.org/.

[27] GSA, *Assistance Listings, Family Planning Service Delivery Improvement Research Grants*, Program number 93.974, https://beta.sam.gov/fal/1ef4e48c545163457c9f2bd0fc52e51c/view.

[28] To view examples of recent research grant award titles, see HHS, *Tracking Accountability in Government Grants*, https://taggs.hhs.gov/saved-search/vvvour.

[29] For current information on congressional appropriations activity, see the CRS Appropriations Status Table, http://www.crs.gov/AppropriationsStatusTable/.

[30] P.L. 115-245, Division B, Title II; P.L. 115-141, Division H, Title II.

exceptions; for example, it does not specify exceptions for cases of rape, incest, or the endangerment of the woman's life.[31]

Requirements on the Use of Title X Funds in P.L. 115-245

P.L. 115-245, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, continues previous years' requirements regarding the use of Title X funds:

- Title X funds shall not be spent on abortions.
- All pregnancy counseling shall be nondirective.[32]
- Funds shall not be spent on promoting or opposing any legislative proposal or candidate for public office.
- Grantees must certify that they encourage "family participation" when minors decide to seek family planning services and that they counsel minors on how to resist attempted coercion into sexual activity.
- Family planning providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.

Sources: P.L. 115-245, Division B, Title II, and §207 and §208. These requirements were also in: P.L. 115-141, Division H, Title II, and §207 and §208; P.L. 115-31, Division H, Title II, and §207 and §208; Office of Management and Budget (OMB), *The Budget of the U.S. Government, Fiscal Year 2019*, *Appendix*, pp. 419, 483, https://www.whitehouse.gov/wp-content/uploads/2018/02/hhs-fy2019.pdf; S.3158, Title II, and §207 and §208.

FY2019 appropriations also are subject to a clause, known as the Weldon amendment, stating that "[n]one of the funds made available in this [a]ct may be made available to a [f]ederal agency or program, or to a [s]tate or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."[33] Some groups have argued that the Weldon amendment conflicts with regulations that require Title X family planning services projects to give pregnant clients the opportunity to receive information, counseling, and referral upon request for several options, including "pregnancy termination."[34] On February 23,

[31] P.L. 115-245, Division B, Title II.

[32] OPA has explained that "grantees may provide as much factual, neutral information about any option, including abortion, as they consider warranted by the circumstances, but may not steer or direct clients toward selecting any option, including abortion, in providing options counseling." (65 *Federal Register* 41273).

[33] P.L. 115-245, Division B, Title V, §507(d). The Weldon Amendment was originally adopted as part of the FY2005 Labor-HHS-Education appropriations law, and it has been attached to each subsequent Labor-HHS-Education appropriations law: P.L. 108-447, Division F, §508(d), 118 Stat. 3163 (FY2005); P.L. 109-149, §508(d), 119 Stat. 2879 (FY2006). Under P.L. 110-5, §2, 121 Stat. 8, FY2007 appropriations were subject to the same conditions as during FY2006. P.L. 110-161, Division G, §508(d), 121 Stat. 1844 (FY2008). P.L. 111-8, Division F, §508(d), 123 Stat. 803 (FY2009). P.L. 111-117, Division D, §508(d), 123 Stat. 3280 (FY2010). Under P.L. 112-10, Division B, §§1101 and 1104, FY2011 appropriations were subject to the same conditions as during FY2010. P.L. 112-74, Division F, §507(d), 125 Stat. 111 (FY2012). Under P.L. 113-6 §§1101 and 1105, FY2013 appropriations are subject to the same conditions as during FY2012 under P.L. 112-74. P.L. 113-76, Division H, Title V, §507(d), 128 Stat. 409 (FY2014). P.L. 113-235, Division G, Title V, §506(d), 128 Stat. 2515 (FY2015); P.L. 114-113, Division H, Title V, §507(d), 129 Stat. 2649 (FY2016); P.L. 115-31, Division H, Title V, §507(d) (FY2017). P.L. 115-141, Division H, Title V, §507(d) (FY2018).

[34] 42 C.F.R. §59.5(a)(5). Examples of this argument appear in "Weldon Amendment," *Congressional Record*, daily edition, vol. 151, no. 51 (April 25, 2005), p. S4222; and "Federal Refusal Clause," *Congressional Record*, daily edition, vol. 151, no. 52 (April 26, 2005), p. S425. The National Family Planning and Reproductive Health Association (NFPRHA), many of whose members provide Title X services, filed a lawsuit challenging the Weldon amendment in the U.S. District Court for the District of Columbia. The court found that "While Weldon may not provide the level of guidance that NFPRHA or its members would prefer, may create a conflict with pre-existing agency regulations, and may impose conditions that NFPRHA members find unacceptable, none of these reasons provides a sufficient basis for the court to invalidate an act of Congress in its entirety." Upon appeal, the U.S. Court of Appeals for the District of Columbia Circuit found that the plaintiff lacked the standing to challenge the Weldon amendment. See *National Family Planning and Reproductive Health Association, Inc., v. Alberto Gonzales, et al*., 468 F.3d 826 (D.C. Cir. 2006), and

2011, HHS published a final rule in the *Federal Register* and stated that potential conflicts would be handled on a case-by-case basis. According to HHS, "[t]he approach of a case by case investigation and, if necessary, enforcement will best enable the Department to deal with any perceived conflicts within concrete situations."[35] However, on June 1, 2018, HHS published a proposed rule in the *Federal Register* that would remove the requirement that Title X projects must offer pregnant clients the opportunity to receive abortion information, counseling, and referral upon request.[36] Under the proposed rule, Title X projects also would be prohibited from referring patients to abortion services. The proposed rule cites the Weldon amendment as a part of its justification for these proposed changes.[37]

The sections below summarize the President's FY2019 budget request and FY2019 appropriations legislation considered by Congress. The final FY2019 appropriations level for Title X, $286.479 million, was the same level proposed by the President's budget request, the Senate-reported bill S.3158, and the Senate-passed bill H.R. 6157. House-reported bill H.R. 6470 would have provided no funding for Title X in FY2019.

FY2019 Budget Request

President Trump's FY2019 budget request, submitted February 12, 2018, proposed $286.479 million for Title X, the same as the FY2017 and FY2018 enacted levels.[38] The FY2019 budget proposed to continue previous years' provisions in appropriations laws by prohibiting the use of Title X funds for abortion, among other requirements (see text box above).

According to the HRSA *Justification of Estimates for Appropriations Committees*, the proposed FY2019 funding level would support family planning services for 4 million clients, of which 90% would have family incomes at or below 200% of the federal poverty guidelines.[39] The program's FY2019 goals include preventing 903,000 unintended pregnancies and reducing infertility by screening 1.2 million young women for chlamydia.[40] The FY2019 target for cost per client served is $345.11, with the goal of maintaining the increase in cost per client below the medical care inflation rate.[41] According to the *Justification*, the Title X program has encouraged clinics to improve financial sustainability by having more contracts with insurance plans and by recovering more costs through reimbursements and billing third-party payers.[42] The *Justification* emphasizes

391 F. Supp. 2d 200, 209 (D.D.C. 2005).

[35] HHS, "Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws," 76 *Federal Register* 9973, February 23, 2011. For recent developments in HHS enforcement of the Weldon amendment and other conscience protections, see HHS, *Conscience and Religious Freedom*, https://www.hhs.gov/conscience/index.html.

[36] HHS, OPA, "Compliance with Statutory Program Integrity Requirements," 83 *Federal Register* 25502-2533, June 1, 2018, https://www.federalregister.gov/d/2018-11673.

[37] For more about HHS's proposed changes to Title X that are discussed in this proposed rule, see CRS Report R45284, *Title X Family Planning: Proposed Rule on Statutory Compliance Requirements*

[38] U.S. Office of Management and Budget (OMB), *The Budget of the U.S. Government, Fiscal Year 2019, Appendix*, pp. 419, 483, https://www.whitehouse.gov/wp-content/uploads/2018/02/hhs-fy2019.pdf; P.L. 115-141, Division H, Title II; P.L. 115-31, Division H, Title II.

[39] HHS, HRSA, *Fiscal Year 2019, Justification of Estimates for Appropriations Committees*, 2018, p. 314, https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2019.pdf.

[40] Ibid., p. 315.

[41] Ibid., p. 316.

[42] Ibid., p. 313. Family planning services grant applications should have "Evidence that the applicant has ability to bill third party commercial insurance carriers and Medicaid in accordance with Title X requirements; and the ability to facilitate enrollment of clients into Medicaid," according to HHS, OPA, *FY2018 Announcement of Anticipated Availability of Funds for Family Planning Services Grants* (Hereafter cited as "FY2018 FOA"), p. 24,

that family planning projects should "optimally" offer primary health services onsite or "in close proximity."[43] The *Justification* also states that the Title X program "will likely need to continue addressing the impact of the Zika virus or other conditions which affect non-pregnant individuals of child-bearing age, including but not limited to the population which receives services at Title X family planning service sites."[44]

The FY2019 budget stated that it included "provisions prohibiting certain abortion providers from receiving Federal funds from HHS, including those that receive funding under the Title X Family Planning program and Medicaid, among other HHS programs."[45] One such provision would have blocked HHS discretionary funds from being made available to a prohibited entity "either directly, through a State (including through managed care contracts with a State), or through any other means."[46] This prohibition would have applied "[n]otwithstanding any other provision of law." The provision proposed to define a *prohibited entity* as an entity, including its affiliates, subsidiaries, successors, and clinics, that meets all of the following criteria at the time of enactment:

(1) It is a nonprofit organization under Internal Revenue Code Section 501(c)(3);[47]

(2) It is an essential community provider primarily engaged in family planning services, reproductive health, and related medical care;[48]

(3) It performs, or provides any funds to any other entity that performs, abortions (other than in cases of rape, incest, and certain physician-certified cases in which the woman is in danger of death unless an abortion is performed);

(4) Total federal Title X grants to the entity (including affiliates, subsidiaries, or clinics) exceeded $23 million in FY2017.

The prohibited entity definition would cease to apply to an entity that certifies that it will no longer perform, nor fund any other entity that performs, an abortion (other than in cases of rape, incest, and when the woman is in danger of death unless an abortion is performed). The HHS

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https://www.hhs.gov/opa/sites/default/files/FY18%20Title%20X%20Services%20FOA_Final_Signed.pdf. See also Mia R. Zolna, Megan L. Kavanaugh, and Kinsey Hasstedt, "Insurance-related Practices at Title X-funded Family Planning Centers under the Affordable Care Act: Survey and Interview Findings," *Women's Health Issues*, vol. 28, no. 1 (January-February 2018), pp. 21-28; and also Jennifer Rogers et al., *The Affordable Care Act and Title X Family Planning Services: How the Changing Health Care Landscape Has Affected Service Use and Billing Practices*, Altarum Institute and The Urban Institute for HHS OPA, 2017, pp. 3 and 21, https://www.fpntc.org/sites/default/files/resources/altarum_aca_title_x_2014.pdf.

[43] HHS, HRSA, *Fiscal Year 2019, Justification of Estimates for Appropriations Committees*, p. 313.

[44] HHS, HRSA, *Fiscal Year 2019, Justification of Estimates for Appropriations Committees*, p. 314.

[45] OMB, *The Budget of the U.S. Government, Fiscal Year 2019*, February 2018, p. 56, https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf.

[46] OMB, *The Budget of the U.S. Government, Fiscal Year 2019, Appendix*, pp. 769, https://www.whitehouse.gov/wp-content/uploads/2018/02/appendix-fy2019.pdf.

[47] The criteria are that the entity "is an organization described in section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 and exempt from taxation under section 501(a) of such Code." Section 501(c)(3) organizations are commonly referred to as *charitable* organizations and are tax-exempt under Section 501(a). See Internal Revenue Service, *Exemption Requirements - 501(c)(3) Organizations*, https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations. IRC Section 501 is codified in the *U.S. Code* at 26 U.S.C. 501, http://uscode.house.gov/view.xhtml?req=(title:26%20section:501%20edition:prelim).

[48] The Essential Community Provider (ECP) regulation is 45 C.F.R. §156.235. The ECP list is viewable at https://data.healthcare.gov/dataset/FINAL-PY-2019-ECP-LIST-plus-updates/ecf3-gujb.

Secretary would be required to seek repayment of any federal assistance if the certification's terms are violated.[49]

The proposed provision did not mention Planned Parenthood Federation of America (PPFA). However, PPFA may have met the criteria for a prohibited entity.[50] In March 2017, the *New York Times* reported that, in response to congressional proposals to restrict federal funds to PPFA, the White House informally proposed to preserve federal funding if PPFA stopped providing abortions. PPFA rejected that informal White House proposal.[51]

House FY2019 Appropriations Bill

On July 23, 2018, the House Committee on Appropriations reported H.R. 6470, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019. H.R. 6470 would have provided no funding for Title X in FY2019.[52] Prior to the reporting, on July 11, 2018, during the committee's bill markup, the committee rejected an amendment to H.R. 6470 that would have funded Title X at the FY2018 enacted level and would have prohibited the bill's funds from being used to finalize, implement, administer, or enforce any rule amending Title X regulations.[53]

Section 533 of H.R. 6470 would have made funds not available to certain "prohibited entities." This provision was similar to the proposal in the FY2019 budget discussed above. Section 533(a) would have blocked the bill's funds from being made available to a prohibited entity "either directly, through a State (including through managed care contracts with a State), or through any other means."[54] This prohibition would have applied "notwithstanding any other provision of

[49] The provision stated: "The Secretary of Health and Human Services shall seek repayment of any Federal assistance received by any entity that had made a certification described in paragraph (1) and subsequently violated the terms of such certification." (OMB, *The Budget of the U.S. Government, Fiscal Year 2019, Appendix*, pp. 769).

[50] There are PPFA-affiliated organizations listed in (1) the Internal Revenue Service's "Select Check" database of tax-exempt nonprofit organizations, https://www.irs.gov/charities-non-profits/exempt-organizations-select-check; (2) HHS's list of essential community providers, https://data.healthcare.gov/dataset/FINAL-PY-2019-ECP-LIST-plus-updates/ecf3-gujb; and (3) the National Abortion Federation's directory of abortion providers, https://prochoice.org/think-youre-pregnant/find-a-provider/. According to HHS's Tracking Accountability in Government Grants System (TAGGS), total FY2017 Title X awards to Planned Parenthood-affiliated grantees exceeded $23 million, https://taggs.hhs.gov/saved-search/0ycham.

[51] Maggie Haberman, "Trump Tells Planned Parenthood Its Funding Can Stay if Abortion Goes," *New York Times*, March 6, 2017, https://www.nytimes.com/2017/03/06/us/politics/planned-parenthood.html; PPFA, "Planned Parenthood Statement on New York Times Story," press release, March 6, 2017, https://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-statement-on-new-york-times-story.

[52] Section 227 of the bill states: "None of the funds appropriated in this Act may be used to carry out Title X of the PHS Act."

[53] The defeated committee amendment stated: "None of the funds made available by this Act may be used to finalize, implement, administer, or enforce any rule amending part 59 of title 42, Code of Federal Regulations (relating to grants for family planning purposes), including proposed rules published by the Department of Health and Human Services in the Federal Register on June 1, 2018 (83 *Fed. Reg*. 25502 et seq.)." *Amendment to Labor, HHS, Education Appropriations Bill, 2019 Offered by Mrs. Lowey of New York*, July 11, 2018, https://plus.cq.com/pdf/amendment-5356259.pdf; U.S. House Committee on Appropriations, "Roll call vote no. 14," *Full Committee Markup - FY19 Labor, Health and Human Services, Education, and Related Agencies, Full Committee Votes*, July 11, 2018, https://docs.house.gov/meetings/AP/AP00/20180711/108538/HMKP-115-AP00-20180711-SD008.pdf; Andrew Siddons and Kellie Mejdrich, "Labor-HHS-Education Bill OK'd; Family Separation Changes Added," *CQ Committee Coverage*, July 11, 2018, http://www.cq.com/doc/committees-20180711397934.

[54] This funding prohibition is written broadly enough to potentially apply to, for example, indirect funding through the bill's block grants to states (such as the Social Services Block Grant and the Maternal and Child Health Services Block Grant) and federal Medicaid funds (including federal funds for Medicaid managed care).

law."[55] Section 533(b) proposed to define a *prohibited entity* as an entity, including its affiliates, subsidiaries, successors, and clinics, that meets all these criteria at the time of enactment:

- It is a nonprofit organization under Internal Revenue Code Section 501(c)(3).
- It is an essential community provider primarily engaged in family planning services, reproductive health, and related medical care.
- It performs, or provides any funds to any other entity that performs, abortions (other than in cases of rape, incest, and certain physician-certified cases where the woman is in danger of death unless an abortion is performed).
- Total federal Title X grants to the entity (including affiliates, subsidiaries, or clinics) exceeded $23 million in FY2016.

The prohibited entity definition would cease to apply to an entity that certifies that it will no longer perform, or fund any other entity that performs, an abortion (other than in cases of rape, incest, and when the woman is in danger of death unless an abortion is performed). The HHS Secretary would be required to seek repayment of any federal assistance if the certification's terms were violated.[56]

Section 533 of H.R. 6470 did not mention PPFA. However, PPFA may have met the criteria for a prohibited entity.[57] The provision possibly could have prohibited the bill's funds, including federal funds from Medicaid and other HHS programs, from going to PPFA and its affiliates and clinics.

Senate FY2019 Appropriations Bill

On June 28, 2018, the Senate Appropriations Committee reported S. 3158, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019. S. 3158 proposed $286.479 million for Title X, the same as the FY2018 enacted level, and continued previous years' provisions in appropriations laws prohibiting the use of Title X funds for abortion, among other requirements. (See the text box above, "Requirements on the Use of Title X Funds in P.L. 115-245.")

On August 23, 2018, the Senate passed H.R. 6157, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019.[58] Similar to S. 3158, the Senate-passed H.R. 6157 proposed to fund Title X at the FY2018 enacted level and continued previous years'

[55] For example, the prohibition would override the *freedom of choice* statutory requirement that Medicaid enrollees may obtain family planning services from the provider of their choice. The freedom of choice requirement is discussed in "Who Provides Family Planning and Reproductive Health Services for Medicaid Beneficiaries?" in CRS Report R44130, *Federal Support for Reproductive Health Services: Frequently Asked Questions*.

[56] The provision states: "The Secretary of Health and Human Services shall seek repayment of any Federal assistance received by any entity that had made a certification described in paragraph (1) and subsequently violated the terms of such certification."

[57] There are PPFA-affiliated organizations listed in (1) the Internal Revenue Service's "Select Check" database of tax-exempt nonprofit organizations, https://www.irs.gov/charities-non-profits/exempt-organizations-select-check; (2) HHS's list of essential community providers, https://data.healthcare.gov/dataset/FINAL-PY-2019-ECP-LIST-plus-updates/ecf3-gujb; and (3) the National Abortion Federation's directory of abortion providers, https://prochoice.org/think-youre-pregnant/find-a-provider/. According to HHS's Tracking Accountability in Government Grants System (TAGGS), total FY2016 Title X awards to Planned Parenthood-affiliated grantees exceeded $23 million: https://taggs.hhs.gov/saved-search/3dwffj.

[58] H.R. 6157 - Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, *Actions Overview*, https://www.congress.gov/bill/115th-congress/house-bill/6157/actions.

provisions in appropriations laws prohibiting the use of Title X funds for abortion, among other requirements. (See the text box above, "Requirements on the Use of Title X Funds in P.L. 115-245.")

During Senate floor consideration of H.R. 6157, two amendments (S.Amdt. 3730 and S.Amdt. 3967) were submitted that were similar to the above-mentioned Section 533 of H.R. 6470. S.Amdt. 3730 was submitted on August 16, 2018, but saw no further action. This amendment was identical to Section 533 of H.R. 6470. S.Amdt. 3967 was proposed on August 23, 2018, and defeated in a floor vote on the same day.[59] S.Amdt. 3967 was similar to Section 533 of H.R. 6470. However, it did not have the phrase "notwithstanding any other provision of law," or require repayment of federal assistance if the specified certification's terms were violated.

FY2019 Appropriations Conference Report

Subsequent to Senate passage of H.R. 6157, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, the House and Senate formed a conference committee to finalize the bill. Conference report H.Rept. 115-952 was filed September 13, 2018. The conference report was agreed to in the Senate on September 18, 2018, agreed to in the House on September 26, 2018, and signed by the President on September 28, 2018, becoming P.L. 115-245.

As noted above, P.L. 115-245 funds Title X at $286.479 million, the same as the FY2018 enacted level, and continues previous years' provisions in appropriations laws prohibiting the use of Title X funds for abortion, among other requirements. (See the text box above, "Requirements on the Use of Title X Funds in P.L. 115-245.")

History of Funding

Table 1 shows Title X appropriations amounts since FY1971, when the program was created. **Figure 2** shows Title X appropriations amounts since FY1978, in current dollars (not adjusted for inflation) and constant FY2018 dollars (adjusted for medical care inflation).

[59] S.Amdt. 3967, Actions, https://www.congress.gov/amendment/115th-congress/senate-amendment/3967/actions.

Table 1. Title X Family Planning Program Appropriations, FY1971-FY2019

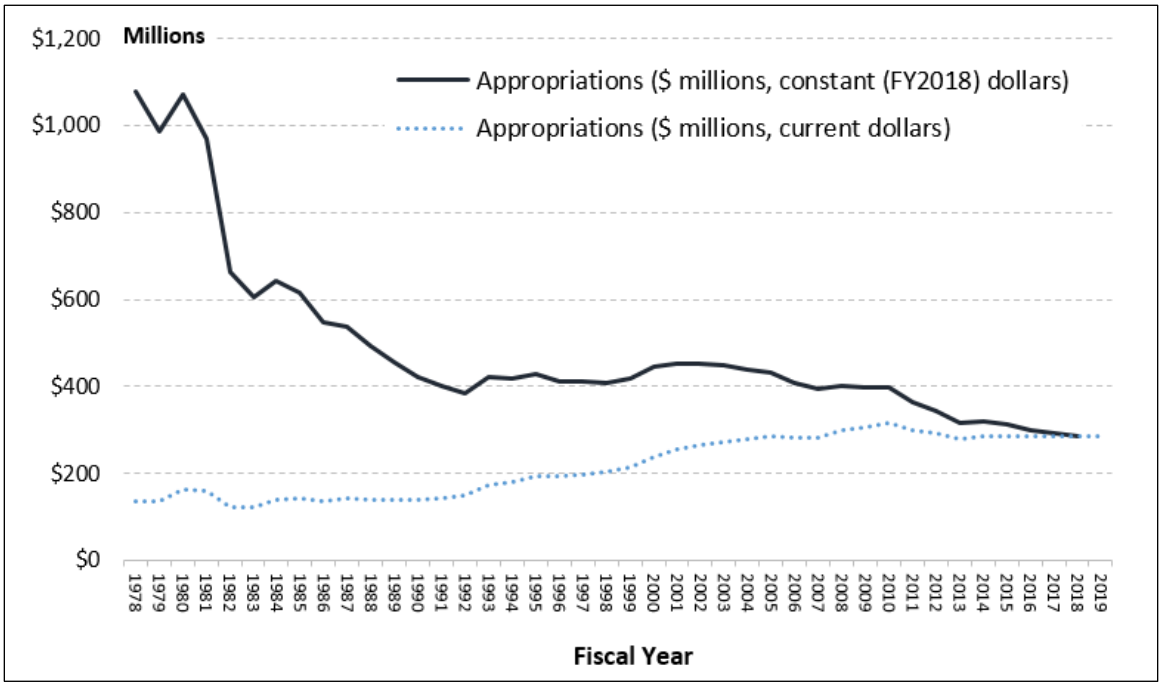
(in millions, current dollars, not adjusted for inflation)

FY	Appropriation	FY	Appropriation	FY	Appropriation
1971	$6.0	1988	$139.7	2005	$286.0
1972	$61.8	1989	$138.3	2006	$282.9
1973	$100.6	1990	$139.1	2007	$283.1
1974	$100.6	1991	$144.3	2008	$300.0
1975	$100.6	1992	$149.6	2009	$307.5
1976	$100.6	1993	$173.4	2010	$317.5
1977	$113.0	1994	$180.9	2011	$299.4
1978	$135.0	1995	$193.3	2012	$293.9
1979	$135.0	1996	$192.6	2013	$278.3
1980	$162.0	1997	$198.5	2014	$286.5
1981	$161.7	1998	$203.5	2015	$286.5
1982	$124.2	1999	$215.0	2016	$286.5
1983	$124.1	2000	$238.9	2017	$286.5
1984	$140.0	2001	$253.9	2018	$286.5
1985	$142.5	2002	$265.0	2019	$286.5
1986	$136.4	2003	$273.4		
1987	$142.5	2004	$278.3		

Sources: Table prepared by CRS using data from the following: For FY1971-FY2005, Department of Health and Human Services, Office of Population Affairs, *Title X Funding History*, https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/funding-history/index.html; FY2006, Senate Appropriations Committee, S.Rept. 109-287, p. 325; FY2007, *Consolidated Appropriations Act, 2008 Committee Print of the House Committee on Appropriations on* H.R. 2764/P.L. 110-161, Division G, p. 1793, http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39564; FY2008-FY2009, "Explanatory Statement Submitted by Mr. Obey, Chairman of the House Committee on Appropriations, Regarding H.R. 1105, Omnibus Appropriations Act, 2009," *Congressional Record*, daily edition, vol. 155, no. 31 (February 23, 2009), p. H2378; FY2010, P.L. 111-117, 123 Stat. 3239; FY2011, P.L. 112-10, §1810 and §1119; FY2012, HHS, HRSA, *Fiscal Year 2013 Justification of Estimates for Appropriations Committees*, p. 347; FY2013, HHS, HRSA, *Sequestration Operating Plan for FY2013,* https://web.archive.org/web/20170429160747/https://www.hrsa.gov/about/budget/operatingplan2013.pdf; FY2014, P.L. 113-76, Division H, Title II; FY2015, P.L. 113-235, Division G, Title II; FY2016, P.L. 114-113, Division H, Title II; FY2017, P.L. 115-31, Division H, Title II; FY2018, P.L. 115-141, Division H, Title II. FY2019, P.L. 115-245, Division B, Title II.

Note: The Congressional Budget Act of 1974 (P.L. 93-344, Title V) moved the start of the federal fiscal year from July 1 to October 1, starting with FY1977. This table does not include funds from the transition quarter of July 1, 1976, to September 30, 1976.

Figure 2. Title X Family Planning Program Appropriations, FY1978-FY2019



Sources: Current dollars, see **Table 1**. Constant (FY2018) dollars, calculated by CRS using a fiscal year inflation adjustment based on monthly data for the Consumer Price Index All - Urban Consumers for Medical Care published by the Bureau of Labor Statistics, http://data.bls.gov/timeseries/CUUR0000SAM/.

Abortion and Title X

The law prohibits the use of Title X funds in programs in which abortion is a method of family planning.[60] On July 3, 2000, OPA released a final rule on abortion services in family planning projects.[61] The rule updated and revised regulations that had been promulgated in 1988.[62] The

[60] 42 U.S.C. §300a-6. In addition, language in annual Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts have also prohibited the use of Title X funds for abortions. (In FY2018, this provision appeared in P.L. 115-141, Division H, Title II). For background on abortion funding restrictions in general, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*.

[61] HHS, OPA, "Standards of Compliance for Abortion-Related Services in Family Planning Services Projects," 65 *Federal Register* 41270-41280, July 3, 2000, https://federalregister.gov/a/00-16758; and HHS, OPA, "Provision of Abortion-Related Services in Family Planning Services Projects," 65 *Federal Register* 41281-41282, July 3, 2000, https://federalregister.gov/a/00-16759.

[62] HHS, Public Health Service, "Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects," 53 *Federal Register* 2922, February 2, 1988. The 1988 rule was subsequently challenged in court. The Supreme Court upheld the rule's constitutional and statutory validity in Rust v. Sullivan, 500 U.S. 173 (1991); see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*. In 1991 and 1992, HHS issued directives interpreting the 1988 rule (reprinted in Senate, *Congressional Record*, vol. 137, part 23 (November 23, 1991), p. 34397, https://www.govinfo.gov/app/details/GPO-CRECB-1991-pt23/; and "Family Planning," Senate, *Congressional Record*, vol. 138, part 5 (March 26, 1992), pp. 6930-6931, https://www.govinfo.gov/app/details/GPO-CRECB-1992-pt5/. These directives were challenged in court and enjoined; see *National Family Planning & Reproductive Health Association v. Sullivan*, 979 F.2d. 227 (1992). In 1993, the HHS Secretary suspended the rule (HHS, Public Health Service, "Standards of Compliance for Abortion-Related Services in Family Planning Service Projects," 58 *Federal Register* 7462, February 5, 1993).

major revision revoked the "gag rule," which was said to restrict family planning grantees from providing abortion-related information to Title X clients. The regulation at 42 C.F.R. §59.5 had required, and continues to require, that abortion not be provided as a method of family planning. The July 3, 2000 final rule amended 42 C.F.R. §59.5, adding the requirement that a project must provide pregnant clients with the opportunity to receive information and counseling on prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. When a pregnant client requests such information and counseling, the project must give "neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates she does not wish to receive such information and counseling."[63]

According to OPA, family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities, such as abortion. The abortion prohibition does not apply to all Title X grantees' activities, but applies only to Title X projects' activities. The grantee's abortion activities must be "separate and distinct" from the Title X project activities.[64] Safeguards to maintain this separation include (1) careful review of grant applications to ensure that the applicant understands the requirements and has the capacity to comply with all requirements; (2) independent financial audits to examine whether there is a system to account for program-funded activities and nonallowable program activities; (3) yearly comprehensive reviews of the grantees' financial status and budget report; and (4) periodic and comprehensive program reviews and site visits by OPA regional offices.[65]

It is unclear precisely how many Title X clinics also provide abortions through their non-Title X activities. In 2015, the Guttmacher Institute surveyed a nationally representative sample of publicly funded family planning clinics. Respondents included 535 clinics that received Title X funds. Based on that survey, an estimated 10% of clinics that received any Title X funding reported offering abortions separately from their Title X project.[66]

In 2004, following appropriations conference report directions, HHS surveyed its Title X grantees on whether their clinic sites also provided abortions with nonfederal funds.[67] Grantees were informed that responses were voluntary and "without consequence, or threat of consequence, to non-responsiveness."[68] The survey did not request any identifying information. HHS mailed surveys to 86 grantees and received 46 responses. Of these, 9 indicated that at least one of their clinic sites (17 clinic sites in all) also provided abortions with nonfederal funds, 34 indicated that

[63] On December 19, 2008, HHS published a provider conscience rule which, according to HHS at the time, was "inconsistent" with the requirement that Title X grantees provide clients with abortion referrals upon request (73 *Federal Register* 78087). The rule was later rescinded in 2011 (76 *Federal Register* 9968).

[64] 65 *Federal Register* 41281-41282, July 3, 2000.

[65] Email from HHS, Office of the Assistant Secretary for Legislation, May 1, 2017. Site visits and comprehensive program reviews are described in IOM, *A Review of the HHS Family Planning Program: Mission, Management, and Measurement of Results*, pp. 349-354.

[66] Guttmacher Institute, unpublished tabulations from a 2015 Survey of Publicly Funded Family Planning Clinics. The survey methodology is described in Mia R. Zolna and Jennifer J. Frost, *Publicly Funded Family Planning Clinics in 2015: Patterns and Trends in Service Delivery Practices and Protocols*, Guttmacher Institute, November 2016, https://www.guttmacher.org/sites/default/files/report_pdf/publicly-funded-family-planning-clinic-survey-2015_1.pdf. For details by abortion type, see Appendix Table A, Questions Q11ee and Q11ii, p. 54.

[67] HHS, *Report to Congress Regarding the Number of Family Planning Sites Funded Under Title X of the Public Health Service Act That Also Provide Abortions with Non-Federal Funds*, 2004. HHS was directed to conduct the survey by FY2004 appropriations conference report H.Rept. 108-401, pp. 800-801.

[68] H.Rept. 108-401, p. 801.

none of their clinic sites provided abortions with nonfederal funds, and 3 responses had no numerical data or said the information was unknown.

Title X supporters argue that family planning reduces unintended pregnancies, thereby reducing abortion.[69] HHS estimates that Title X services helped avert 901,838 unintended pregnancies in FY2016, and the Guttmacher Institute estimates that Title X services helped avert 822,300 unintended pregnancies in calendar year 2015.[70] It is unclear exactly how many unintended pregnancies would have ended in abortion; however, the Guttmacher Institute estimates that in 2015, clinics receiving Title X funds helped avert pregnancies that would have been terminated through 277,800 abortions, including 54,500 abortions among teens.[71]

In contrast, Title X critics argue that federal funds should be withheld from any organization, such as PPFA, that performs abortions. They argue that federal funding for nonabortion activities frees up Planned Parenthood's other resources for its abortion activities.[72] Some critics also argue that if a family planning program is operated by an organization that also performs abortions, the implicit assumption and the message to clients is that abortion is a method of family planning.[73]

In June 2018, HHS published a proposed rule that would prohibit Title X projects from making abortion referrals and would require physical and financial separation between Title X projects and abortion-related activities, among other changes to Title X regulations.[74]

Teen Pregnancy and Title X

In 2017, of the 4 million Title X clients, 17% were aged 19 or younger.[75] Critics argue that by funding Title X, the federal government is implicitly sanctioning nonmarital sexual activity among teens. These critics argue that a reduced U.S. teen pregnancy rate could be achieved if family planning programs emphasized efforts to convince teens to delay sexual activity, rather

[69] Examples of this argument can be found in Rachel Benson Gold et al., *Next Steps for America's Family Planning Program: Leveraging the Potential of Medicaid and Title X in an Evolving Health Care System*, Guttmacher Institute, New York, 2009, pp. 16-17, http://www.guttmacher.org/pubs/NextSteps.pdf, and in U.S. Congress, Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, 104th Cong., 1st sess., August 10, 1995, S.Hrg. 104-416 (Washington: GPO, 1996), pp. 16-21.

[70] HHS, HRSA, *Fiscal Year 2019, Justification of Estimates for Appropriations Committees*, p. 305. Jennifer J. Frost et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, Guttmacher Institute, April 2017, pp. 1, 10, https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_1.pdf.

[71] Frost et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, pp. 1, 10, 11.

[72] Examples of this argument can be found in House debate, *Congressional Record*, daily edition, vol. 154, no. 112 (July 9, 2008), pp. H6320-H6326. According to the Planned Parenthood Federation of America's most recent *Annual Report*, abortions accounted for 3% of Planned Parenthood services. From October 1, 2015, through September 30, 2016, Planned Parenthood health centers performed 321,384 abortion procedures. During that period, Planned Parenthood health centers provided 9.5 million services to 2.4 million patients during 4 million clinical visits. PPFA, *Planned Parenthood 2016-2017 Annual Report*, 2017, pp. 29-31, http://www.plannedparenthood.org/about-us/annual-report.

[73] An example of these arguments can be found in U.S. Congress, Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, pp. 22-35.

[74] HHS, OPA, "Compliance with Statutory Program Integrity Requirements," 83 *Federal Register* 25502-2533, June 1, 2018, https://www.federalregister.gov/d/2018-11673. For more on the proposed rule, see CRS Report R45284, *Title X Family Planning: Proposed Rule on Statutory Compliance Requirements*.

[75] Fowler et al., *Family Planning Annual Report: 2017 National Summary*, p. 9.

than efforts to decrease the percentage of sexually active teens who become pregnant.[76] (See CRS Report R45183, *Teen Pregnancy: Federal Prevention Programs*.)

The program's supporters, in contrast, argue that the Title X program should be expanded to serve more people in order to reduce the rate of unintended pregnancies. The Guttmacher Institute estimates that in 2015, Title X family planning services helped avert an estimated 188,700 unintended teen pregnancies.[77] In addition, the Guttmacher Institute estimates that without Title X clinics' services, the U.S. teen unintended pregnancy rate would have been 44% higher in 2015.[78] Supporters of expanding family planning services argue that the United States has a higher teen pregnancy rate than some countries (such as Sweden) where a similar percentage of teens are sexually active, in part because U.S. teens use contraception less consistently. Some also argue that recent declines in U.S. teen birth rates can be explained in part by changes in teen contraceptive use.[79]

Confidentiality for Minors and Title X

By law, Title X providers are required to "encourage" family participation when minors seek family planning services.[80] However, confidentiality is required for personal information about Title X services provided to individuals, including adolescents.[81] OPA instructs grantees on confidentiality for minors:

> It continues to be the case that Title X projects may not require written consent of parents or guardians for the provision of services to minors. Nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.[82]

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[76] An example of these arguments can be found in U.S. Congress, Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, pp. 22-35.

[77] Frost et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, p. 11. See also the discussion of publicly funded family planning services in "Programs to Reduce Unintended Pregnancy," in The Institute of Medicine, *The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families* (Washington: National Academy Press, 1995), p. 220, http://www.nap.edu/catalog/4903/the-best-intentions-unintended-pregnancy-and-the-well-being-of.

[78] Frost et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, p. 1.

[79] An example of these arguments can be found in U.S. Congress, Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, pp. 16-21. See also Jacqueline E. Darroch et al., "Differences in Teenage Pregnancy Rates Among Five Developed Countries: The Roles of Sexual Activity and Contraceptive Use," *Family Planning Perspectives*, vol. 33, no. 6 (November/December 2001), pp. 244-251; John S. Santelli and Andrea J. Melnikas, "Teen Fertility in Transition: Recent and Historic Trends in the United States," *Annual Review of Public Health*, vol. 31 (2010), pp. 371-383; Heather D. Boonstra, "What Is Behind the Declines in Teen Pregnancy Rates?" *Guttmacher Policy Review*, vol. 17, no. 3 (Summer 2014), pp. 15-21; Laura Lindberg, John Santelli, and Sheila Desai, "Understanding the Recent Decline in Adolescent Fertility in the United States, 2007-2013," *Journal of Adolescent Health*, vol. 58, no. 2, Supplement (February 2016), pp. S100-S101; and CRS Report R45184, *Teen Birth Trends: In Brief*.

[80] 42 U.S.C. 300(a) states that Title X grantees shall encourage family participation "to the extent practical." P.L. 115-245, Division B, §207 requires Title X grantees to certify that they encourage family participation in minors' decisions to seek family planning services.

[81] 42 C.F.R. §59.11. Also, several court cases have interpreted Title X statute as supporting confidentiality for minors; see Glenn A. Guarino, "Provision of family planning services under Title X of Public Health Service Act (42 U.S.C.A. §300-300a-8) and implementing regulations," *American Law Reports Federal*, 1985, 71 A.L.R. Fed. 961.

[82] HHS, OPA, *Clarification regarding "Program Requirements for Title X Family Planning Projects": Confidential Services to Adolescents*, OPA Program Policy Notice 2014-1, June 5, 2014, https://www.hhs.gov/opa/sites/default/files/

The April 2014 Title X guidelines state,

> Providers of family planning services should offer confidential services to adolescents and observe all relevant state laws and any legal obligations, such as notification or reporting of child abuse, child molestation, sexual abuse, rape, or incest, as well as human trafficking. Confidentiality is critical for adolescents and can greatly influence their willingness to access and use services. As a result, multiple professional medical associations have emphasized the importance of providing confidential services to adolescents.
>
> Providers should encourage and promote communication between the adolescent and his or her parent(s) or guardian(s) about sexual and reproductive health. Adolescents who come to the service site alone should be encouraged to talk to their parents or guardians. Educational materials and programs can be provided to parents or guardians that help them talk about sex and share their values with their child. When both parent or guardian and child have agreed, joint discussions can address family values and expectations about dating, relationships, and sexual behavior.[83]

Although minors are to receive confidential services, Title X providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.[84]

Some minors who use Title X clinics have dependent health insurance coverage through a parent's private health insurance policy. However, for confidentiality reasons, they may not wish to bill family planning or STD services to their parent's health insurance.[85] In a 2016 survey of a nationally representative sample of Title X clients, 75% of insured teen clients planned to use their health insurance at their visit. Of those who did not plan to use their health insurance, 53% cited "someone might find out" as a reason.[86] In another study conducted at 17 Title X sites, 4% of family planning visits were by clients who said they had health insurance but did not want to use it. Of those, 44% cited confidentiality concerns. Of those citing confidentiality concerns, 39% were under the age of 18.[87] According to OPA, Title X clinics "commonly forgo billing" health insurers to maintain confidentiality.[88]

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ppn2014-01-001.pdf.

[83] Gavin et al., "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs," p. 13. For an overview of Title X efforts to encourage family participation, see RTI International, *An Assessment of Parent Involvement Strategies in Programs Serving Adolescents: Final Report*, 2007, http://web.archive.org/web/20160830233907/http://www.hhs.gov/opa/pdfs/parent-involvement-final-report.pdf. The report found that parent involvement is associated with several positive outcomes, such as delayed sexual initiation and lower rates of pregnancy and sexually transmitted infections.

[84] P.L. 114-113, Division H, Title II, §208. HHS, OPA, *Clarification regarding "Program Requirements for Title X Family Planning Projects": Confidential Services to Adolescents*, OPA Program Policy Notice 2014-1, June 5, 2014.

[85] Private health insurance policy holders often receive "explanations of benefits" that describe services charged to their insurance policy. Often policy holders may also view a history of claims made under their policies. These common health insurance practices may inadvertently breach the confidentiality of dependents who receive care through those policies. See Guttmacher Institute, *State Laws and Policies: Protecting Confidentiality for Individuals Insured as Dependents*, https://www.guttmacher.org/state-policy/explore/protecting-confidentiality-individuals-insured-dependents.

[86] Megan L. Kavanaugh, Mia R. Zolna, and Kristen L. Burke, "Use of Health Insurance Among Clients Seeking Contraceptive Services at Title X–Funded Facilities in 2016," *Perspectives on Sexual and Reproductive Health*, vol. 50, no. 3 (September 2018), pp. 105, 106.

[87] Jennifer Yarger et al., *Impacts of an Intervention to Improve Screening for Patients' Health Insurance and Need for Payment Privacy in the Title X Network*, National Family Planning & Reproductive Health Association, June 2017, pp. 16-18, https://www.confidentialandcovered.com/file/1-research/1.1-research—findings/CC_InterventionReport.pdf.

[88] The financial impact on Title X is discussed at National Family Planning & Reproductive Health Association, *Confidential and Covered*, https://www.confidentialandcovered.com; and Leah E. Masselink et al., "Title X–Funded Health Center Staff Members' Perspectives on Barriers to Insurance Use For Confidential Family Planning Services,"

As for payment of services provided to minors, Title X regulations indicate that "unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources."[89] Program requirements instruct that "eligibility for discounts for unemancipated minors who receive confidential services must be based on the income of the minor."[90]

Supporters of confidentiality argue that parental notification or parental consent requirements would lead some sexually active adolescents to delay or forgo family planning services, thereby increasing their risk of pregnancy or sexually transmitted diseases.[91]

Critics argue that confidentiality requirements can interfere with parents' right to know of and to guide their children's health care. Some critics also disagree with discounts for minors without regard to parents' income, because the Title X program was intended to serve "low-income families."[92]

Planned Parenthood and Title X

PPFA operates through a national office and has 56 affiliates. The 56 affiliates operate more than 600 local health clinics throughout the United States.[93] PPFA affiliates participating in Title X can receive funds directly from HHS or indirectly from other Title X grantees, such as their state or local health departments. The Guttmacher Institute found that in 2015, Planned Parenthood clinics made up 13% of Title X clinics, but served 41% of female Title X clients.[94]

In March 2018, the Government Accountability Office (GAO) released a report with data on the obligations, disbursements, and expenditures of federal funds for several nonprofit organizations, including PPFA and its affiliates.[95]

According to the GAO report, HHS reported obligating $23.41 million, and disbursing $21.07 million, to PPFA affiliates through the Title X program in FY2015.[96] These figures reflected funds

Perspectives on Sexual and Reproductive Health, March 5, 2018, https://doi.org/10.1363/psrh.12054.

[89] 42 C.F.R. §59.2.

[90] HHS, OPA, *Program Requirements for Title X Funded Family Planning Projects*, April 2014, p. 13, https://www.hhs.gov/opa/sites/default/files/ogc-cleared-final-april.pdf.

[91] An example of this argument is in Rachel K. Jones et al., "Adolescents' Reports of Parental Knowledge of Adolescents' Use of Sexual Health Services and Their Reactions to Mandated Parental Notification for Prescription Contraception," *JAMA*, vol. 293, no. 3 (January 19, 2005), pp. 340-348. See also "Adolescent Services – Confidential Services" in Gavin et al., "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs," pp. 38-39.

[92] Examples of these arguments appear in *Congressional Record*, daily edition, vol. 142 (July 11, 1996), pp. H7348-H 7349, and U.S. Congress, Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, pp. 22-23. See also the discussion in RTI International, *An Assessment of Parent Involvement Strategies in Programs Serving Adolescents: Final Report*, 2007, pp. 5-9.

[93] Planned Parenthood Federation of America, "Where Does Planned Parenthood Funding Go?" in *Facts and Figures*, https://www.plannedparenthood.org/about-us/facts-figures.

[94] Frost et al., *Publicly Funded Contraceptive Services At U.S. Clinics, 2015*, pp. 1, 9, https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_3.pdf.

[95] U.S. Government Accountability Office (GAO), *Health Care Funding: Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013-2015*, GAO-18-204R, March 6, 2018, https://www.gao.gov/products/GAO-18-204R.

[96] According to GAO, the term *obligation* refers to "a definite commitment by a federal agency that creates a legal liability to make payments immediately or in the future," while the term *disbursement* refers to "amounts paid by

that HHS provided directly to these organizations. They did not include Title X funds that reached Planned Parenthood or its affiliates indirectly through subgrants or that passed through from state agencies or other organizations.

The GAO report also showed PPFA affiliates' expenditures of Title X funds, identified through audit reports that PPFA affiliates submitted to comply with Office of Management and Budget (OMB) audit requirements. Expenditures included federal funds provided directly or indirectly to these organizations. The most recent expenditure data were from FY2015, when Planned Parenthood and its affiliates reported spending $57.28 million from the Title X Family Planning Services program.[97]

On September 22, 2015, the Congressional Budget Office (CBO) estimated that PPFA and its affiliates receive approximately $60 million annually through the Title X program.[98]

Proposed Rule on Compliance with Statutory Program Integrity Requirements

On June 1, 2018, HHS published a proposed rule in the *Federal Register*,[99] "Compliance with Statutory Program Integrity Requirements," that would make several changes to the Title X program such as:

- Title X projects would no longer be required to offer pregnant clients the opportunity to receive abortion information, counseling, and referral upon request.
- Title X projects would be prohibited from referring patients to abortion services.
- Title X projects would be required to maintain physical and financial separation between their Title X projects and abortion-related activities.
- Several terms, including *family planning* and *low-income family*, would have new definitions.
- Criteria for awarding Title X Family Planning Services grants would be revised.
- Title X grant applicants and grantees would be subject to new reporting requirements.

This proposed rule has sparked a debate about whether providing an abortion-related service, such as referring a pregnant client to an abortion provider, should be a family planning service under Title X. In addition, there is debate on whether this proposed rule is a "gag rule" that would

federal agencies, in cash or cash equivalents, to satisfy government obligations." The Title X amounts include the Family Planning Services program and the Family Planning Service Delivery Improvement Research Grants program. GAO, *Health Care Funding: Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013-2015*, pp. 1, 24, 29, and 30.

[97] Table 30, GAO, *Health Care Funding: Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013-2015*, p. 53. Expenditure data were reported using affiliates' 12-month fiscal years, which vary. Organizations with annual expenditures of federal funds of $500,000 or more ($750,000 or more for fiscal years beginning on or after December 26, 2014) are required to submit single audit reports to the Federal Audit Clearinghouse. The table excludes expenditures by PPFA affiliates that did not meet the audit threshhold.

[98] Congressional Budget Office, *Budgetary Effects of Legislation That Would Permanently Prohibit the Availability of Federal Funds to Planned Parenthood*, September 22, 2015, p. 2, https://www.cbo.gov/publication/50833.

[99] HHS, OPA, "Compliance with Statutory Program Integrity Requirements," 83 *Federal Register* 25502-2533, June 1, 2018, https://www.federalregister.gov/d/2018-11673.

prevent some Title X clients from receiving adequate information that would permit them to make an informed decision about their health care treatment. For more details on the proposed rule, see CRS Report R45284, *Title X Family Planning: Proposed Rule on Statutory Compliance Requirements*.

FY2018 Family Planning Services Grant Cycle

FY2018 Funding Opportunity Announcement

The Title X funding opportunity announcement (FOA), which is released by OPA, lays out grant application requirements, program priorities, and other key issues. A significant delay in the FOA for FY2018 Title X Family Planning Services grants raised concern.[100] Some grantees feared services could be interrupted because of a potential lapse in grant funding.[101] A press release accompanied the FOA: "Recognizing the announcement has been delayed, HHS is committed to ensuring that services continue unabated. Current grantees received notification today inviting them to submit a request for grant extension, so there is no gap in services."[102]

Key Differences Between the FY2017 and FY2018 FOAs

There were several key differences between the FY2018 FOA and the FY2017 FOA, which was posted under the previous Administration.[103] Key differences were as follows:

The FY2018 FOA had a new requirement for clients under the age of consent. A client under the age of consent would be subject to a preliminary screening to rule out victimization after he or she presents with an STD, pregnancy, or any suspicion of abuse.[104]

The FY2018 FOA stated that Title X projects should communicate the benefits of avoiding sexual risk, delaying sex, and returning to "sexually risk-free status," especially for adolescents.[105] The

[100] On October 11, 2017, OPA posted a "forecast" on the federal Grants.gov website. The forecast estimated that an FOA would be posted November 1, 2017, with an estimated award date of April 1, 2018. However, OPA did not post the FOA until February 23, 2018, with project periods anticipated to start September 1, 2018. HHS Office of the Assistant Secretary for Health, "Version History," *FY 2018 Announcement of Anticipated Availability of Funds for Family Planning Services Grants*, https://www.grants.gov/web/grants/view-opportunity.html?oppId=297943.

[101] Sandhya Raman, "States Alarmed by Delay in HHS Family Planning Money," *Roll Call*, January 12, 2018, https://www.rollcall.com/news/policy/states-frustrated-delay-hhs-family-planning-money. Among current grantees, 60% had grant periods scheduled to end March 31, 2018, and 40% had grant periods scheduled to end June 2018, according to Mattie Quinn, "Months Late, Trump Administration Changes Family Planning Program's Priorities," *Governing*, February 26, 2018, http://www.governing.com/topics/health-human-services/gov-hhs-abortion-title-x-states-funding-trump.html.

[102] HHS, "HHS Announces the Availability of $260 Million to Fund the Title X Family Planning Program," press release, February 23, 2018, https://www.hhs.gov/about/news/2018/02/23/hhs-announces-availability-260-million-fund-title-x-family-planning-program.html.

[103] HHS, OPA, "FY2017 Announcement of Anticipated Availability of Funds for Family Planning Services Grants," https://www.hhs.gov/opa/sites/default/files/FY-17-Title-X-FOA-New-Competitions.pdf (hereafter cited as "FY2017 FOA"). HHS, OPA, "FY2018 Announcement of Anticipated Availability of Funds for Family Planning Services Grants," https://www.hhs.gov/opa/sites/default/files/FY18%20Title%20X%20Services%20FOA_Final_Signed.pdf (hereafter cited as "FY2018 FOA").

[104] FY2018 FOA, p. 9.

[105] FY2018 FOA, p. 11. To learn more about "sexually risk-free status," see HHS, OPA, "What Is Meant by 'Returning to a Sexually Risk-Free Status?'" in *FY2018 Title X Family Planning Services Funding Opportunity Announcement: Questions and Answers*, February 27, 2018, https://www.hhs.gov/opa/grants-and-funding/grant-opportunities/fy2018-

FY2017 FOA did not use the phrase "sexually risk-free." The FY2017 FOA required projects to have written clinical protocols in accordance with "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs and Program Requirements for Title X Funded Family Planning Projects" (QFP).[106] The QFP document stated, "Providers should give comprehensive information to adolescent clients about how to prevent pregnancy. This information should clarify that avoiding sex (i.e., abstinence) is an effective way to prevent pregnancy and STDs."[107]

Both FOAs required that projects encourage family participation with respect to services to minors.[108] But unlike the FY2017 FOA, the FY2018 FOA additionally stated that this requirement applied to all clients, not just to minors.[109] Under the FY2018 FOA, successful projects would use "counseling techniques that encourage family participation for all clients, including the involvement of parents, spouses or family where practicable."[110]

The FY2018 FOA emphasized care coordination by noting that "each Title X project should ensure that family planning is contextualized within a holistic conversation of health, with the project optimally offering primary health services onsite, or having robust referral linkages to primary health providers in close proximity to the Title X site."[111] The FY2017 FOA did not mention onsite or nearby primary care, but it did list among the program's priorities: "Addressing the comprehensive health care needs of clients through formal, robust linkages or integration with comprehensive primary care providers."[112]

Under the FY2017 FOA, final award selections were made by the applicable Public Health Service Region's regional health administrator (RHA), in consultation with the Deputy Assistant Secretary for Population Affairs (DASPA) and the Assistant Secretary for Health (ASH) or their designees.[113] In contrast, under the FY2018 FOA, final award selections were made by the DASPA or designee.[114] This change was a shift from program practices in place since the 1980s. The Institute of Medicine's (IOM's) 2009 report *A Review of the HHS Family Planning Program* stated that "Although the original language of the Title X statute provides decision-making authority to the DASPA, the Secretary of HHS transferred this authority from the DASPA to the RHAs in the 1980s. This transfer has helped maintain the integrity of the funding processes

services-questions-answers/index.html.

[106] FY2017 FOA, p. 10.

[107] Gavin et al., "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs," p. 13.

[108] FY2017 FOA, pp. 6, 7, 20, and 40. FY2018 FOA, pp. 8, 10, and 22.

[109] FY2018 FOA, p. 8.

[110] Ibid., p.22.

[111] FY2018 FOA, pp. 7-8.

[112] FY2017 FOA, p. 10.

[113] FY2017 FOA, p. 43. Links to brief profiles of the Assistant Secretary for Health (ASH) and current regional health administrators (RHAs) are at HHS, Office of the Assistant Secretary for Health, *OASH Leadership*, https://www.hhs.gov/ash/about-ash/leadership/index.html. A link to a brief profile of the Acting Deputy Assistant Secretary for Population Affairs (DASPA) is at HHS, OPA, *Leadership*, https://www.hhs.gov/opa/about-opa/leadership/index.html.

[114] FY2018 FOA, p. 44: "The Deputy Assistant Secretary for Population Affairs (DASPA) or Designee Will Make Final Award Selections to be Recommended to the Grants Management Officer for Risk Analysis."

associated with the Title X program."[115] The IOM report also stated that "the DASPA's status as a political appointee is one of the most significant issues affecting the Title X program."[116]

The FY2018 FOA encouraged applications for "innovative" services and methods that had been "historically underrepresented" in the Title X program.[117] The FY2017 FOA did not use those terms.

Finally, among the program's key issues, the FY2017 FOA explicitly mentioned access to "contraceptive options, including long acting reversible contraceptives (LARC), other pharmaceuticals, and laboratory tests, preferably on site" whereas the FY2018 FOA did not.[118] A *Questions and Answers* document accompanying the FY2018 FOA did clarify that projects must provide contraception.[119]

FY2018 Awards

In announcing the FY2018 Grantees for Family Planning Services, OPA stated that "All of these grants will begin on Saturday, September 1, 2018, and will end on Saturday, March 31, 2019."[120] This seven-month grant period is a departure from the program's typical practice.

Title X family planning services projects have "project periods," typically up to three years, during which HHS does not require the grantee to recompete for funds. Within these project periods, continuing awards generally are funded in annual increments (one-year budget periods),

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[115] "Effect of Political Issues on Program Administration and Management," in Institute of Medicine (IOM), Committee on a Comprehensive Review of the HHS Office of Family Planning Title X Program, *A Review of the HHS Family Planning Program: Mission, Management, and Measurement of Results*, ed. Adrienne Stith Butler and Ellen Wright Clayton (Washington, DC: The National Academies Press, 2009), p. 359, http://www.nap.edu/catalog/12585/a-review-of-the-hhs-family-planning-program-mission-management.

[116] Ibid., p. 358. See also the IOM report's discussion of "Program Leadership," pp. 80-81.

[117] FY2018 FOA, pp. 7 and 9. See also HHS, OPA, *FY 2018 Title X Family Planning Services Funding Opportunity Announcement: Questions and Answers*, which states,

> Do I need to have provided family planning, reproductive health, or other related Title X services before to be eligible to apply for or be awarded a Title X family planning service grant? No, there is not a requirement for previous or direct experience in providing family planning, reproductive health, or Title X services to be awarded a grant... We encourage new applicants to submit quality and innovative proposals, expanding subrecipient partnerships in novel ways, and extending services to those areas and clients previously unserved or underserved.

[118] FY2017 FOA, p. 10. Long acting reversible contraceptives (LARCs) include intrauterine devices (IUDs) and hormonal implants.

[119] HHS, OPA, *FY 2018 Title X Family Planning Services Funding Opportunity Announcement: Questions and Answers*, https://www.hhs.gov/opa/grants-and-funding/grant-opportunities/fy2018-services-questions-answers/index.html.

[120] HHS, OPA, *Recent Grant Awards, HHS Title X Family Planning Service Grants Award by State*, https://www.hhs.gov/opa/grants-and-funding/recent-grant-awards/index.html. Examples of FY2018 grantees who were not grantees in FY2017 included the Arizona Department of Health Services, the Cornell Scott-Hill Health Corporation (Connecticut), Community Health Centers of Pinellas, Inc. (Florida), Neighborhood Improvement Project, Inc. (Georgia), CCI Health and Wellness Services (Maryland), Nevada Primary Care Association (Nevada), The Floating Hospital, Inc. (New York), Beacon Christian Community Health Center (New York), Planned Parenthood Southwest Ohio Region, Caring Hands Healthcare Centers, Inc. (Oklahoma), Your Health Clinic dba Callie Clinic (Texas), and the Wisconsin Department of Health Services. Examples of FY2017 grantees who were not on the FY2018 grantee list included HealthQuarters, Inc. (Massachusetts), Planned Parenthood League of Massachusetts (Massachusetts), and Planned Parenthood of the Columbia/Willamette (Oregon). FY2017 grantees were listed in OPA, *Title X Family Planning Directory of Grantees*, August 2017, https://www.hhs.gov/opa/sites/default/files/Title-X-Directory-August-2017.pdf; and HHS, Tracking Accountability in Government Grants System, https://taggs.hhs.gov/saved-search/mqi6o9.

although program guidance states that "shorter or longer budget periods may be established for compelling administrative or programmatic reasons."[121] Continuing awards are contingent on factors such as appropriations, grantees' compliance with federal requirements, and the best interests of the government.[122] OPA stated in the FY2018 FOA that OPA "will fund grants in annual increments (budget periods) and generally for a project period of up to 3 years, although [OPA] may approve shorter project periods."[123]

Rule Nullification on Selecting Subrecipients

As mentioned under the "Grantees and Clinics" heading in this report, Title X grantees can provide family planning services directly or can subaward Title X funds to other government or nonprofit entities (subrecipients) to provide services. In December 2016, OPA promulgated the final rule "Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients."[124] The rule became effective January 18, 2017, but P.L. 115-23 nullified the rule on April 13, 2017.[125]

The rule would have applied to grantees that make subawards; it would not have affected grantees that provide all their Title X services directly. It would have added language that "No recipient making subawards for the provision of services as part of its Title X project may prohibit an entity from participating for reasons other than its ability to provide Title X services" to Title X Family Planning Services grant program regulations.[126]

The President signed P.L. 115-23, "Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule submitted by Secretary of Health and Human Services relating to compliance with title X requirements by project recipients in selecting subrecipients." P.L. 115-23 nullified the rule under the Congressional Review Act.[127] As a result, the rule "shall be treated as though such rule had never taken effect."[128] That is, the rule is deemed not to have had any effect at any time. Furthermore, HHS is prohibited from reissuing the nullified rule in

[121] HHS, OPA, *Program Requirements for Title X Funded Family Planning Projects*, April 2014, p. 10.

[122] FY2018 FOA, p. 56.

[123] FY2018 FOA, p. 12. Similar language was in the FY2017 FOA, p. 11; the FY2016 FOA, p. 11, https://web.archive.org/web/20160830201208/http://www.hhs.gov/opa/pdfs/opa-fy2016-1.pdf; the FY2015 FOA, p. 11, https://web.archive.org/web/20150108224119/http://www.hhs.gov/opa/pdfs/opa-fy2015-1.pdf the FY2014 FOA, p. 11, https://web.archive.org/web/20140612005514/http://www.hhs.gov/opa/pdfs/2014-fpservices-foa.pdf; and the FY2013 FOA, p. 10, https://www.grants.gov/web/grants/view-opportunity.html?oppId=188556. The FY2012 FOA stated that grants were "generally approved for a project period of up to five years" (FY2012 FOA, p. 10, https://www.grants.gov/web/grants/view-opportunity.html?oppId=125513).

[124] HHS, OPA, Office of the Secretary, "Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients," 81 *Federal Register* 91852-91860, December 19, 2016, https://www.federalregister.gov/d/2016-30276. It was preceded by a proposed rule and public comment period, see 81 *Federal Register* 61639-61646, September 7, 2016, https://www.federalregister.gov/d/2016-21359.

[125] When asked if any actions were taken to implement the rule before its nullification, HHS responded that "No - no actions were taken to implement the rule because of timing. Recipients that would have been impacted were those whose applications were submitted on or after January 18, 2017. All of those applicants would have had funding dates of July 1, 2017, but the rule was nullified prior to that." Email from HHS, Office of the Assistant Secretary for Legislation, May 1, 2017.

[126] The rule would have amended 42 C.F.R. §59.3 and revised the section's heading to read "Who is eligible to apply for a family planning services grant or to participate as a subrecipient as part of a family planning project?" The section's current heading is "Who is eligible to apply for a family planning services grant?"

[127] The Congressional Review Act is codified at 5 U.S.C. §§801-808.

[128] 5 U.S.C. §801(f).

"substantially the same form" or issuing a "new rule that is substantially the same" as the nullified rule.[129]

In the December 2016 preamble accompanying the rule, OPA explained that some states had taken actions to limit Title X participation by certain types of providers.[130] For example, some states enacted laws to prohibit state and local agencies from giving Title X subawards to abortion providers.[131] Some other states had established a priority system for allocating Title X subawards, for example, by giving preference to state health departments, primary care providers, and community health centers over specialized family planning clinics.[132] OPA argued that "these policies, and varying court decisions on their legality, have led to uncertainty among recipients, inconsistency in program administration, and reduced access to services for Title X priority populations."[133]

The rule would have limited the criteria a grantee could use to restrict entities from Title X subawards, disallowing "reasons other than [the entity's] ability to provide Title X services." The preamble explained that applicants for new and continuing Title X grants would be required to describe their criteria for choosing subrecipients.[134] The preamble stated that, under this rule, HHS would have reviewed these submissions for rule compliance and would have made "every effort to help entities come into compliance, and will award replacement grants to other providers when necessary to minimize any disruption of services."[135]

Supporters of the rule argued that it would have protected funding to specialized family planning providers, such as Planned Parenthood,[136] and that it would have protected vulnerable

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[129] See CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*.

[130] According to the rule preamble, "Since 2011, 13 states have placed restrictions on or eliminated subawards with specific types of providers based on reasons other than their ability to provide Title X services." (81 *Federal Register* 91852). Some of this state activity is tracked by Guttmacher Institute, *State Family Planning Funding Restrictions*, https://www.guttmacher.org/state-policy/explore/state-family-planning-funding-restrictions, and Usha Ranji et al., *Financing Family Planning Services for Low-income Women: The Role of Public Programs*, Kaiser Family Foundation, May 11, 2017, Table 1, http://kff.org/womens-health-policy/issue-brief/financing-family-planning-services-for-low-income-women-the-role-of-public-programs.

[131] OPA noted the example of Florida law H.B. 1411, 2016 Leg., Reg. Sess. (Fla. 2016). According to OPA, this law was permanently enjoined on August 18, 2016, in an unpublished court order. (81 *Federal Register* 91853, footnote 8).

[132] OPA discussed the example of the Texas state government's "tiered" system for Title X subaward competition in 2011. (81 *Federal Register* 91853; Texas General Appropriations Act, 82nd Leg., R.S., ch. 1355, art. II, rider 77, at II-71, http://www.lrl.state.tx.us/scanned/ApproBills/82_0/82_R_ALL.pdf#page=179.) In FY2013, the Women's Health and Family Planning Association of Texas became the state's Title X grantee; previously, it had been the Texas Department of State Health Services.

[133] 81 *Federal Register* 91858.

[134] Title X family planning services projects have "project periods," typically up to three years, during which HHS does not require the grantee to recompete for funds. Within these project periods, continuing awards are generally funded in annual increments (one-year budget periods). Continuing awards are contingent on factors such as appropriations, grantees' compliance with federal requirements, and the best interests of the government. See HHS, OPA, *Announcement of Anticipated Availability of Funds for Family Planning Services Grants, FY2018*, pp. 12 and 56, https://www.hhs.gov/opa/sites/default/files/FY18%20Title%20X%20Services%20FOA_Final_Signed.pdf; HHS, OPA, *Program Requirements for Title X Funded Family Planning Projects*, April 2014, p. 10.

[135] 81 *Federal Register* 91853-91854.

[136] See, e.g., The Editorial Board, "One Obama Rule That Trump Should Keep: Making Sure Family Planning Funds Reach Everyone Who Needs Them," *Los Angeles Times*, December 27, 2016, http://www.latimes.com/opinion/editorials/la-ed-titlex-new-rule-20161221-story.html; and The Editorial Board, "A Way to Protect Planned Parenthood Services," *New York Times*, September 10, 2016, p. A18, http://www.nytimes.com/2016/09/10/opinion/a-way-to-protect-planned-parenthood-services.html.

individuals' access to family planning services.[137] Critics of the rule argued that states should have the discretion to administer Title X funds consistently with state policy,[138] and that the rule would have violated the conscience rights of voters and states that object to public funding of abortion providers.[139]

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[137] See, e.g., Letter from 34 U.S. Senators to President-Elect Donald J. Trump, December 22, 2016, http://www.help.senate.gov/download/title-x-trump; and Letter from 41 U.S. Senators to the Honorable Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, October 7, 2016, https://www.regulations.gov/document?D=HHS-OS-2016-0014-14254.

[138] See, e.g., U.S. House of Representatives, Select Investigative Panel of the Energy and Commerce Committee, *Final Report*, December 30, 2016, pp. xlii and 408, https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Analysis/20161230Select_Panel_Final_Report.pdf.

[139] See, e.g., Bradford Richardson, "Obama Administration 'Stunt' Would Force States to Fund Planned Parenthood," *Washington Times*, September 7, 2016, http://washingtontimes.com/news/2016/sep/7/obama-administration-stunt-would-force-states-to-f/; and Robert King, "Conservative Chides Feds Over Protecting Planned Parenthood," *Washington Examiner*, September 6, 2016, http://www.washingtonexaminer.com/conservative-chides-feds-over-protecting-planned-parenthood/article/2601071.