



To: U.S. Department of Health and Human Services
Office of Population Affairs
Office of the Assistant Secretary for Health
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From: Susan B. Anthony List, Inc.
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Re: Public Comment-Compliance With Statutory Program Integrity Requirements (HHS-OS-2018-0008), also known as the Protect Life Rule.

Via www.regulations.gov comment portal

To Whom It May Concern:

Susan B. Anthony List, Inc. (“SBA”) is a 501(c)(4) nonprofit organization, based in Arlington, Virginia, that seeks to reduce and ultimately end abortion in the United States by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders. Marjorie Dannenfelser serves as the principal officer of SBA.

Charlotte Lozier Institute (“CLI”) is a 501(c)(3) nonprofit organization, based in Arlington, Virginia. CLI serves as the Education Trust Fund for SBA and provides research and education on abortion, the right to life, and an array of issues in ethics and the life sciences. Charles Donovan serves as the principal officer of CLI.

Life Issues Institute (“LII”) is a 501(c)(3) nonprofit organization, based in Cincinnati, Ohio. LII serves as the grassroots partner of CLI. LII provides positive, relevant education to

millions of people throughout the world on the most current life-related issues. Bradley Mattes serves as the principal officer of LII.

Collectively, our three organizations supply, influence and support millions of like-minded Americans with education about, messaging on, and grassroots direction for public responses to the most current life-related issues. Our interest in commenting on the Protect Life Rule is to support the desires of our membership and the majority of American citizens who oppose both unrestricted abortion and the use of taxpayer funds to pay for, subsidize, or encourage abortions. We also seek to protect American women and children from the known dangers and harms, physical and psychological, of abortion.

Accordingly, we write in strong support of the proposed rule: Compliance With Statutory Program Integrity Requirements (HHS-OS-2018-0008), also known as the Protect Life Rule.

I. The Necessity of the Protect Life Rule

As we explain below, the Protect Life Rule is necessary to bring Title X regulations into compliance with the Title X statute. The American people have repeatedly expressed their predominant policy preferences by supporting Congressional enactments designed to distinguish and separate abortion from family planning. Likewise, they have supported the principles of the Weldon Amendment and similar laws respecting the conscience rights of health care providers, as well as other measures to prevent the enabling of a deplorable abortion industry.

a. The Protect Life Rule will clarify and solidify the intended bright-line rule of separation of abortion from family planning.

i. The Protect Life Rule is consistent with the original intent of Title X, to clearly separate Title X funds from abortion, which is not health care or family planning.

Abortion is not health care, nor is abortion family planning. The Clinton Administration and subsequent presidential administrations have erroneously allowed the blatant distribution of Title X funding to abortion centers and abortion-referral facilities for years and in direct violation of the original purpose of Title X funding. The Protect Life Rule seeks to restore Title X funding to its original, and unambiguously stated, purpose of supporting family planning and health care without funding abortion or fostering the perception or reality that it is another form of family planning. Congress enacted Title X of the Public Health Service Act¹ (hereinafter the “Statute”) in 1970 by Public Law 91–57. Section 1008 of the Statute clearly states, “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.” This provision has not been altered since its adoption in 1970, a time when the sharp distinction between family planning activities and abortion was reflected in the statutes

and policies of nearly every state and in federal policy and practice. By clarifying and affirming the bright-line separation of abortion and family planning Congress clearly and unambiguously intended, the Protect Life Rule seeks to promote regulatory compliance with the Statute's intent and purpose as originally formulated by its authors.

ii. The Protect Life Rule supports the majority pro-life view of Americans.

Currently, the laws of the United States allow legal abortion for all nine months of pregnancy for any reason, including sex selection.² This extreme position directly conflicts with the viewpoint of the vast majority of the American people. In fact, the latest polling conducted by Gallup indicates that fewer than 1/3rd of Americans (29%) support legal abortion in all circumstances (the current state of U.S. law), with more than 2/3^{rds} (68%) of Americans desiring restrictions on abortion in certain or all circumstances.³

What is more, six in 10 Americans oppose taxpayer funding of abortion.⁴ Money is fungible. Money designated for one purpose (e.g., family planning) necessarily frees up funds for other purposes (e.g., abortion/abortion referrals). As such, organizations that provide abortions or abortion referrals cannot possibly bifurcate or designate Title X funding in a manner meeting the bright-line separation requirements of the Statute. By affirming the bright-line separation of abortion from family planning, the Protect Life Rule resolves the bifurcation problem and makes Title X consistent with America's predominant pro-life values.

iii. Well-established legal precedent supports the right of government to favor childbirth over abortion.

The U. S. Supreme Court has routinely affirmed the legitimate prerogative of the Secretary of Health and Human Services (hereinafter the "Secretary") to impose restrictions on Title X grant recipients in the areas of abortion counseling, abortion referral, and abortion advocacy. *See Rust v. Sullivan*, 500 U.S. 173 (1991) (the "Secretary's construction [of Title X provisions] must be accorded *substantial deference*...")(emphasis added). Moreover, since *Roe v. Wade*, the U.S. Supreme Court has consistently found that the government has a legitimate interest in protecting human life and favoring childbirth over abortion in a host of contexts, including its decisions regarding the allocation of public funds. "[T]he State...has legitimate interests in protecting...the potentiality of human life..." *See Roe v. Wade*, 410 U.S., at 162.

Harris v. McRae further clarifies that the government may favor childbirth over abortion⁵: "Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid.

These incentives bear a direct relationship to *the legitimate congressional interest in protecting potential life.*" *Harris v. McRae*, 448 U.S. 297, at 325 (1980) (emphasis added).

Indeed, the Protect Life Rule's efforts to maintain separation of abortion and family planning for Title X grant recipients are constitutional and well within the Secretary's powers.

b. Taxpayer funding of abortion centers enables a massive and unsafe abortion industry in the United States.

Providing taxpayer funding to abortion centers empowers a massive abortion industry rife with unsafe, unsanitary, and deplorable practices, which have resulted in the injury and even deaths of several women⁶, not to mention the millions of unborn children whose lives have been lost at the hands of this industry.

Planned Parenthood Federation of America ("PPFA") holds the largest market-share in America's abortion industry. PPFA is also a grant recipient of Title X funding. According to its most recent Annual Report, PPFA performed 321,384 abortion procedures in a one-year period from October 1, 2015 through September 30, 2016.⁷ Compared nationally, PPFA performs more than one-third of all abortions in the United States; approximately 926,200 abortions were performed by all abortion providers in the United States in 2014.⁸ Of particular note is that, while the rate of abortion in the United States has steadily declined for the past 30 years, abortions performed by PPFA have increased dramatically. Since 1995, abortions performed by non-PPFA providers decreased by 50.8%, while PPFA abortions increased by an astonishing 142%.⁹ (See Attachment A: Studnicki, et al. Study).

As the Studnicki study indicates, supplying the abortion industry with taxpayer funds leads to the undesirable consequence of bankrolling the industry's entire operations. In fact, PPFA has inflated the U.S. abortion rate by more than *three million* avoidable abortions. This can be attributed to PPFA's intervention in the abortion market.¹⁰

Previous Administrations' failure to maintain the intended bright-line separation of abortion from family planning within Title X has allowed the practices of PPFA to run amok and has resulted in the death of millions of unborn Americans. By establishing a bright-line of separation between abortion and family planning, the Protect Life Rule prevents the empowering of a massive, destructive, and deplorable abortion industry intent on increasing its profits through life-ending procedures. The conflation of these procedures with the provision of family planning and related services is precisely the type of confusion and equivalence Section 1008 of the Public Health Service Act was intended by Congress to prevent.

c. The Protect Life Rule provides welcome relief from an illegal abortion referral mandate that runs counter to the Weldon Amendment.

In its current state, Title X violates the Weldon Amendment, which prohibits the Department of Health and Human Services from excluding recipients from appropriations funding because they do not “provide, pay for, provide coverage of, or refer for abortions.”¹¹ The Weldon Amendment was first adopted in 2005 and has been readopted, or incorporated by reference, in every Health and Human Services Appropriations Act since.

Nonetheless, the current Title X Regulations, which have been in place since the Clinton Administration, mandate that Title X grantees refer for abortion¹² in direct contradiction to the Weldon Amendment. This illegal abortion referral mandate cannot be maintained if Health and Human Services wishes to avoid confusion and maintain a respect for, and compliance with, our current laws.

For the above-stated reasons, the Protect Life Rule is a necessary and welcome regulation that fulfills the clear and unambiguous intention of Congress to maintain a strict and effective wall of separation between publicly funded family planning and abortion.

II. Consideration of Technical Concerns

Respectfully, we wish to address a few technical concerns that we believe will improve the Protect Life Rule if they are adequately addressed.

Notably, the current Protect Life Rule could further specify what is meant by “physically and financially separate” and “nondirective counseling.” Past experience indicates that Title X grantees that wish to direct patients to abortion will manipulate the regulations. We discuss each term below:

a. Clarify “physically and financially separate.”

This term was first introduced by the Reagan Administration after a General Accounting Office (now, Government Accountability Office, GAO) report indicated that Title X grantees were locating within the same physical facilities as abortion centers, sparking the 1988 regulation in which the Secretary of Health and Human Services directed Title X recipients to be physically and financially separate. To ensure that there is no abuse or misunderstanding of this regulation, we recommend that enforcement of this regulation ensure that women do not encounter Title X providers who advocate for abortion as a family planning option. The test of the effectiveness of the resulting regulations should be to limit Title X funding to entities that themselves understand and draw the intended distinction

between abortion and family planning. Organizations that operate a “program” where abortion is offered cannot and do not meet this standard, and the resulting confusion in the minds of potential Title X clients defeats the purpose of Section 1008.

b. Clarify “nondirective counseling.”

The proposed Protect Life Rule states, “all pregnancy counseling shall be nondirective.” However, we believe further direction is necessary.¹³ “Nondirective counseling” should refer to providing full and accurate neutral information about the array of community resources that exist to support women and their unborn children. Further, the Rule should specify that:

- Individuals who counsel patients on pregnancy-outcome options, whether volunteers or staff, shall stipulate that they agree to provide nondirective counseling.
- Title X recipients shall establish written policies indicating their compliance with nondirective counseling rules.
- Title X recipients are required to provide statistical evidence of the results of their counseling with respect to pregnancy, including information about the agencies and services to which their clients have been referred or otherwise directed.

We believe that addressing these technical concerns will strengthen the Protect Life Rule so as to prevent abuse.

III. Response to Common Concerns

Since the announcement of the Protect Life Rule, pro-abortion activists have worked tirelessly to spread misconceptions about the impact of the Protect Life Rule. Below, we respond to the most common concerns presented by opponents of the Protect Life Rule. Notably, many of the arguments against the proposed rule center on the assumption that PPFA affiliates will no longer accept Title X funding.

a. The Protect Life Rule does not target PPFA.

Opponents of the Protect Life Rule claim that it targets a single grantee, PPFA. However, the Protect Life Rule by its express terms applies uniformly to all Title X grant recipients. PPFA is not the only entity that receives Title X funding while performing abortions (e.g., Maine Family Planning).¹⁴ PPFA

has the same option presented to all other Title X grantees—come into compliance with the Protect Life Rule or forego acceptance of Title X monies.

Moreover, Title X monies make up only 4% of PPFA's total \$1.46 billion dollars in revenue.¹⁵ Therefore, PPFA should be able to maintain its operations with only minor adjustments if it chooses to forego accepting Title X funds because of its commitment to abortion as a method of family planning.

b. PPFA deceptively inflates the number of Title X patients it reports serving.

Opponents of the Protect Life Rule claim that PPFA serves the most Title X patients. A look at the math and PPFA's own statistics shows otherwise. PPFA served 2.4 million patients in 2015¹⁶ and PPFA claims that 1.6 million of these patients were Title X patients.¹⁷ If true, this would mean that 67% of Planned Parenthood patients are also Title X patients served by a program that makes up just 4% of their total \$1.46 billion dollars in revenue.

The math simply does not “add up.” To explain the way PPFA can inflate the number of Title X patients that it reports serving, one must understand the slush fund nature of Title X. Ironically, the pro-abortion, and PPFA-friendly, Guttmacher Institute explains it best. A 2007 Guttmacher Institute report explains that Title X funds are used to recruit patients who obtain services for which the clinics then bill Medicaid:

Title X can subsidize the intensive outreach necessary to encourage some individuals to seek services. Furthermore, by paying for everything from staff salaries to utility bills to medical supplies, Title X funds provide the essential infrastructure support that enables clinics to go on and claim Medicaid reimbursement for the [patients] they serve.¹⁸

Contrary to the position of its opponents, the Protect Life Rule will ensure that taxpayers are not forced to create a slush fund for PPFA, and that Title X monies are used in the most effective manner and provided to the patients who most need it. The level of funding available to grantees is in no way affected by the implementation of the Protect Life Rule, nor is the scope of permissible activity affected with respect to outreach and infrastructure apart from ending the use of these activities to promote abortion as a method of family planning in violation of Section 1008.

c. If PPFA and other abortion centers do not comply with the Protect Life Rule, ample qualified health facilities remain to serve patients.

Opponents of the Protect Life Rule assert that there will be a gap in services should PPFA or other abortion centers refuse to comply with the Protect Life Rule. The Protect Life Rule would not decrease Title X funding by a single dollar. Funds would instead be directed to service sites willing to comply with the new regulation, as the vast majority already are. Notably, fewer than 500 of the roughly 4,000 Title X service sites nationwide are Planned Parenthood facilities.

In 2015 there were 9,000 federally qualified health centers (FQHCs) (that number has since grown) serving 23 million patients. If Planned Parenthood could no longer “afford” to care for 1 million women, the net change in patient population per FQHC is approximately 110 women – over a year that amounts to an average of two additional patients per week – a fraction of the thousands of patients an FQHC will see in a year. Any funding abortion providers decline will go to other or new applicants, providing financial resources to absorb new patients.¹⁹

Non-Planned Parenthood clinics that qualify for Title X funds (FQHCs, public health departments, hospitals, and others) are well equipped to serve additional Title X patients. Already, they serve a cumulative 2.2 million female Title X contraceptive patients²⁰, over half the patients served by Title X.

As the nation’s largest abortion provider, PPFA, if it fails to comply with the Protect Life Rule, will be replaced under the program with ample other locations, including FQHCs, public health departments, community clinics, and hospitals, which do not commingle abortion with their other services and can step in to cover any gaps.

d. The Protect Life Rule provides potential for more states to run Title X programs flexible enough to better meet the needs of their citizens.

Opponents of the Protect Life Rule have claimed that adoption of the Rule will harm patients. To the contrary, the Protect Life Rule may enable more states to run Title X programs to better meet the needs of their community. Unquestionably, states and localities typically possess a better understanding of the needs of their own residents than national conglomerates like PPFA. Should changes become necessary, they are also better positioned to hear comments/ complaints and collect demographics/statistics from their constituency, and institute practices best serving their own community. If funds are redirected from PPFA to FQHCs, public health departments, and/or community clinics and hospitals, Americans likely will be better served.

Indeed, the objections and misconceptions perpetuated by those who support abortion can be easily overcome by a simple review of the facts and understanding of the available

alternatives to current practices and policies that are contrary to the clear and unambiguous intent of Congress in adopting Title X.

For the aforementioned reasons, we commend the Department of Health and Human Services for issuing the Protect Life Rule for public comment, and we strongly urge its adoption and implementation.

Respectfully,
Marjorie Dannenfelser, *on behalf of*
Susan B. Anthony List, Inc.
Virginia

Charles Donovan, *on behalf of*
Susan B. Anthony List, Inc. Education Fund d/b/a Charlotte Lozier Institute
Virginia

Bradley Mattes, *on behalf of*
Life Issues Institute
Ohio

¹ 42 U.S.C. 300 through 300a-6

² *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973).

³ "Abortion." Gallup. 2018 May 1-10. Web. Available at: <https://news.gallup.com/poll/1576/abortion.aspx> (accessed 12 June 2018).

⁴ "Americans' Opinions on Abortion" Marist Poll, Knights of Columbus. January 2018. Web. Available at: <https://www.kofc.org/un/en/resources/communications/abortion-limits-favored.pdf> (accessed 12 June 2018).

⁵ *Harris v. McRae*, 448 U.S. 297 (1980).

⁶ See generally "Unsafe: How the Public Health Crisis in America's Abortion Clinics Endangers Women." Americans United for Life. 2016. Web. Available at: <http://www.unsafereport.org/wp-content/uploads/2017/11/Unsafe-2018-Interactive.pdf> (accessed 15 July 2018).

⁷ "Planned Parenthood 100 Years: 2016-2017 Annual Report." Planned Parenthood Federation of America. Page 31. Web. Available at: https://www.plannedparenthood.org/uploads/filer_public/d4/50/d450c016-a6a9-4455-bf7f-711067db5ff7/20171229_ar16-17_p01_lowres.pdf (accessed 14 July 2018).

⁸ "Fact Sheet: Induced Abortion in the United States." Guttmacher Institute. January 2018. Web. Available at: https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf (accessed 14 July 2018).

⁹ Studnicki, J. and Fisher, J.W. (2018) Planned Parenthood: Supply Induced Demand for Abortion in the US. *Open Journal of Preventive Medicine*, 8, 142-145. <https://doi.org/10.4236/ojpm.2018.84014>

¹⁰ Ibid.

¹¹ Consolidated Appropriations Act, 2012, §507(d)(1). Pub.L. 112–74, H.R. 2055, 125 Stat. 785. Enacted December 23, 2011.

¹² <https://www.hhs.gov/opa/sites/default/files/title-x-nprm.pdf>

§ 59.15 Maintenance of physical and financial separation.

A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and §§ 59.13, 59.14, and 59.16 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include:

- (a) The existence of separate, accurate accounting records;
- (b) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;
- (c) The existence of separate personnel, electronic or paper-based health care records, and workstations;
- (d) The extent to which signs and other forms of identification of the Title X project are present, and signs and material referencing or promoting abortion are absent.

¹³ See <https://www.gpo.gov/fdsys/pkg/PLAW-104publ134/pdf/PLAW-104publ134.pdf>

¹⁴ <https://mainefamilyplanning.org/our-services/abortion-services/>.

¹⁵ Crosse, M., Director, Health Care. U.S. Government Accountability Office. Letter to Congressional Requestors, “Health Care Funding: Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013–2015.” 6 Mar. 2018. Web. Available at: <https://www.gao.gov/assets/700/690490.pdf>. (accessed: 15 July 2018) (PPFA receives between \$50-\$60 million in Title X funding annually); Id. at 6. (In FY17, PPFA had excess revenue over expenses of \$98.5 million and net assets of \$1.6 billion).

¹⁶ “Planned Parenthood 100 Years: 2016-2017 Annual Report.” Planned Parenthood Federation of America. Page 31. Web. Available at: https://www.plannedparenthood.org/uploads/filer_public/18/40/1840b04b-55d3-4c00-959d-11817023ffc8/20170526_annualreport_p02_singles.pdf (accessed 15 July 2018).

¹⁷ Hasstedt, K. “Beyond the Rhetoric: The Real-World Impact of Attacks on Planned Parenthood and Title X.” Guttmacher Institute. 3 Aug. 2017. Web. Available at: <https://www.guttmacher.org/gpr/2017/08/beyond-rhetoric-real-world-impact-attacks-planned-parenthood-and-title-x> (accessed 15 July 2018).

¹⁸ Benson Gold, R. “Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort.” *Guttmacher Policy Review*. Vol. 10, Issue 2. 17 May 2007. Web. Available at: <https://www.guttmacher.org/gpr/2007/05/stronger-together-medicaid-title-x-bring-different-strengths-family-planning-effort> (accessed: 15 July 2018).

¹⁹ Donovan, C. “Planned Parenthood and the Public Purse.” Charlotte Lozier Institute. 29 Sept. 2015. Web. Available at: <https://lozierinstitute.org/planned-parenthood-and-the-public-purse/>. (accessed: 15 July 2018).

²⁰ Frost, J., Frohwirth, L., Blades, N., Zolna, M., Douglas-Hall, A. and Bearak, J., “Publicly Funded Contraception Services at U.S. Clinics in 2015.” Guttmacher Institute. April 2017. Web. Available at: https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_3.pdf (accessed: 15 July 2018).