

Congress of the United States
Washington, DC 20515

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

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

The Honorable John Barsa
Acting Deputy Administrator
United States Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523

November 13, 2020

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

Dear Secretary Pompeo, Secretary Azar, and Acting Deputy Administrator Barsa:

As members of the United States House of Representatives, we submit these comments in response to the proposal to amend the Federal Acquisition Regulation (FAR) rule from the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) to implement the Protecting Life in Global Health Assistance policy, as published in the Federal Register on Monday, September 14. As elected officials, we seek to ensure that all people have access to comprehensive and accurate health care information and services. Unfortunately, this rule is the latest example of the Trump administration's relentless efforts to undermine the health and human rights of those across the world and attack sexual and reproductive health and rights for women, girls, LGBTQI+ individuals, and other vulnerable groups. It is especially egregious during a global pandemic.

The global gag rule (also known as the Mexico City Policy or Protecting Life in Global Health Assistance) has been a political flashpoint constraining the sexual and reproductive rights of individuals across the globe since 1984. The Trump administration has already dramatically expanded the global gag rule twice, magnifying its devastating impacts across U.S. foreign assistance, and it now seeks to enforce the policy for the first time on global health contracts. The Kaiser Family Foundation has estimated that approximately 40% of all global health funding has been channeled through contracts and the Federal Acquisition Regulatory Council

determined that about 253 foreign prime contractors would be affected by the proposed rule, including 45 small businesses.¹

Since this expansion in 2017, the policy has been documented to disrupt a wide range of global health efforts. Indeed, the State Department's own "Review of the Implementation of the Protecting Life in Global Health Assistance Policy" released in August 2020, documented serious disruptions to global health programming, including an inability to find replacement partners for family planning programs in several countries, as well as disruptions to the provision of antiretroviral therapy for key populations for close to two years.² By further expanding this rule to contracts which are administered in all areas of global health - including COVID-19 related programs, we are deeply concerned that the result may be additional delays, losses, or gaps in critical health care programs, which may disproportionately impact vulnerable populations and communities.

The proposed rule threatens to drastically expand the damage already done to the United States' relationships with civil society and to cement fractures between long-standing local partnerships. In fact, the global gag rule has resulted in a "chilling effect," disrupting service provision, engagement, and collaboration across coalitions seeking stronger health care systems. Following previous expansions of the global gag rule, organizations reported that they had received little guidance from the U.S. government, leading to overreach in implementation and overinterpretation of the policy's restrictions out of fear and uncertainty over compliance. As a result, organizations have self-censored the programs and information they provide in an effort to ensure their activities are not misconstrued by the administration, which would put their funding at risk. The unprecedented expansion of the policy proposed in the rule is likely to again produce significant confusion resulting in a chilling impact on services, information, and partnerships.

Many of the estimated 253 foreign prime contractors that will be subject to this proposed rule, as well as untold numbers of subcontractors and U.S. contractors charged with compliance oversight of foreign subcontractors, have likely never been required to comply with the global gag rule. As such, the proposed rule is likely to create significant new compliance burdens for these entities, nearly a fifth of which are small businesses.³ Every one of these staff hours and dollars that are being spent on the administration of and compliance with these contracts are resources that are not being spent on providing vitally needed health care programming to help vulnerable communities, their true purpose. The added cost of compliance and other inefficiencies created by the proposed rule represent a poor use of U.S. Government funds,

¹ Lasher, Craig. Taking Out a Contract: Trump Administration Arranges Global Gag Rule Hit on Global Health Contracts. PAI. September 17, 2020. <https://pai.org/resources/taking-out-a-contract-trump-administration-arranges-global-gag-rule-hit-on-global-health-contracts/>

² U.S. Department of State. Review of the Implementation of the Protecting Life in Global Health Assistance Policy. August 2020. <https://www.state.gov/wp-content/uploads/2020/08/PLGHA-2019-Review-Final-8.17.2020-508.pdf>

³ <https://www.federalregister.gov/documents/2020/09/14/2020-17551/federal-acquisition-regulation-protecting-life-in-global-health-assistance>

which were appropriated with the intent of providing assistance to communities in need, not to pay for U.S. government-imposed administrative costs.

Our concerns about disruptions to health services, weakening of civil society, and the diversion of health resources and manpower to deal with new compliance burdens are magnified in the face of the COVID-19 pandemic, which is wreaking havoc on vulnerable health systems. Health workers at all levels continue to have urgent needs for personal protective equipment, and providers must adapt clinic and outreach services to adhere to social distancing guidelines and ensure infection prevention and control measures are followed to allow them to continue to safely serve patients. As the pandemic continues unabated, partners report disruptions to reproductive and maternal health, child health and immunizations, nutrition programs, and efforts to address epidemics like HIV/AIDS, tuberculosis, and malaria. In particular, risk mitigation efforts, such as restrictions on movement or the types of health care services allowed to operate, have limited access to sexual and reproductive health services. Supply chains for commodities, including the full range of contraceptive methods and condoms, which prevent both sexually transmitted infections and unintended pregnancies, have also been disrupted^{4,5}. The proposed rule threatens to further exacerbate these disruptions, as some of the largest global health contracts are projects focused on supply chain and logistics management. The supply chain work at the country level is reliant on organizations with logistics and forecasting expertise, which likely includes foreign NGO subcontractors who have not yet been exposed to the global gag rule. Conservative estimates show that a 10% reduction in the availability of reproductive health services is likely to result in 49 million women having an unmet need for modern contraception and 15 million additional unintended pregnancies.⁶

The COVID-19 pandemic is not a time for non-essential rulemaking. The ongoing public health and economic crises resulting from COVID-19 impede the ability to have a meaningful public comment period on any issues beyond these immediate and urgent crises. Furthermore, we are alarmed that the administration has chosen to propose an expansion of a policy that further restricts and disrupts health care access amid a global pandemic.

Based on the concerns enumerated above, we request responses to the following questions:

1. Have USAID and the Departments of State and HHS considered the potential impact of this proposed rule on these existing global health service disruptions?
2. Have USAID and the Departments of State and HHS considered what additional impacts this proposed rule may have on global health programs?

⁴<https://www.theatlantic.com/international/archive/2020/06/coronavirus-pandemic-sex-health-condoms-reproductive-health/612298/>

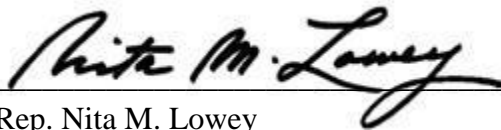
⁵https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_Update_No-5_UNFPA_Supplies_31_July_external.pdf

⁶<https://www.guttmacher.org/journals/ipsrh/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health>

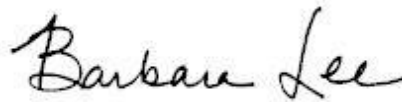
3. Have USAID and the Departments of State and HHS considered the impact of this proposed rule on supply chains, including contraceptive commodities, vaccines, antiretrovirals to treat HIV/AIDS, and other essential medicines?
4. How many prime contractors and subcontractors do USAID and the Departments of State and HHS estimate will not comply with this proposed regulation? What plans are in place to replace any contractors who do not comply?
5. How do USAID and the Departments of State and HHS intend to ensure providers are giving clients accurate information on reproductive health decisions to promote voluntarism and informed choice?
6. Have USAID and the Departments of State and HHS assessed how the burden of compliance will impact the resources available to implement programs? Are there specific regions or types of programs that will be disproportionately impacted by the burdens imposed under the proposed rule?
7. Do some global health sectors rely more heavily on foreign contractors and subcontractors to achieve their programmatic objectives than others and are those contractors or subcontractors more or less likely to be engaged in restricted abortion-related activities with non-U.S. financing?
8. What information do the departments/agencies themselves believe is necessary to ensure compliance? What practical utility does this information serve in delivering high-quality public health services funded by the American taxpayer?
9. The proposed rule has estimated that the cost impact on the public of taking this regulatory act at \$2.1 million annually in perpetuity. Please provide the assumptions and methodology used in calculating this estimate.
10. The proposed rule also provides an estimate of the public reporting burden for required information collection of nearly 39,000 total response burden hours. Please provide the assumptions and methodology used in calculating this estimate.
11. What steps are the departments and agencies willing to take to reduce, limit or mitigate the impact that the increased burden of compliance may have on clients or beneficiaries' access to health services and supplies provided by contractors?
12. Have USAID and the Departments of State and HHS examined possible disruptions to COVID-19 response activities as a result of this expansion of the global gag rule to global health contracts?
13. Have USAID and the Departments of State and HHS examined possible disruptions to COVID-19 related supply chains (personal protective equipment, testing, laboratory equipment, etc.) that may result from any contractors or subcontractors declining to comply with the global gag rule?
14. Have USAID and the Departments of State and HHS examined how the compliance burden of the proposed global gag rule expansion will direct resources, including monetary and staff time, away from emergency COVID-19 response activities supported by global health contracts?

The proposed rule would gravely harm countless people around the world and is a direct attack on sexual and reproductive health and rights. As elected officials, we oppose this proposed rule because it will disrupt service delivery of global health programs including those aimed at COVID-19, silence civil society organizations, and increase compliance burdens and inefficiencies in U.S. foreign assistance. Amid the ongoing COVID-19 global pandemic, the further expansion of this draconian policy will amplify global health challenges and inequities across the world. While we look forward to your answers to our questions, we strongly urge you to withdraw the proposed rule which will cause unmitigated harm to the world's most vulnerable people.

Sincerely,



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Member of Congress



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Member of Congress



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Member of Congress



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