

Congress of the United States
Washington, DC 20515

February 14, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

The Honorable Neomi Rao
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Director Mulvaney and Administrator Rao:

We have serious concerns about the regulatory review process of the Title X gag rule, which was submitted to the Office of Information and Regulatory Affairs (OIRA) for final review on February 7, 2019.¹ In particular, we are concerned that OIRA may soon approve the final rule for publication without ensuring that the Department of Health and Human Services (HHS) has conducted a comprehensive cost-benefit analysis of the rule's potential economic and health impacts.

We have reason to believe that the final rule, if implemented, would undermine the federal Title X family planning program and threaten access to family planning services for millions of low-income women across the United States.²

The regulatory review process for this rule has been unconventional and nontransparent. Last May, OIRA accepted the draft rule with no advanced public notice. The proposed rule did not appear on either the Fall 2017 or Spring 2018 Regulatory Agenda, and—contrary to Executive Order 13563—there appeared to be no early outreach to stakeholders who would be

¹ Department of Health and Human Services, *Compliance With Statutory Program Integrity Requirements*, 83 Fed. Reg. 25502 (June 1, 2018) (proposed rule) (online at www.federalregister.gov/documents/2018/06/01/2018-11673/compliance-with-statutory-program-integrity-requirements).

² Kaiser Family Foundation, *Proposed Changes to Title X: Implications for Women and Family Planning Providers* (Nov. 2018) (online at <http://files.kff.org/attachment/Issue-Brief-Proposed-Changes-to-Title-X-Implications-for-Women-and-Family-Planning-Providers>).

impacted by the rule.³ The average review period is 45 days, but this draft rule moved through OIRA in less than two weeks. During this time—contrary to Executive Order 12866—OIRA reportedly denied stakeholder meeting requests and completed review of the proposed rule in just one week.⁴

Despite the troubling irregularities in the regulatory review process, the Trump Administration rejected numerous requests to extend the proposed rule's comment period to allow impacted stakeholders the opportunity to provide meaningful feedback.⁵ Even within this comment period, numerous major medical associations, 15 governors, 200 Members of Congress, more than 20 state and local health departments, and more than 500,000 members of the public submitted comments opposing the rule on constitutional, legal, ethical, and policy grounds.⁶

Of particular concern, HHS declined to deem the Title X rule economically significant—completely disregarding the considerable health-related costs the rule would impose—and failed to conduct a comprehensive regulatory impact analysis.⁷ As the Institute for Policy Integrity at New York University School of Law stated in its official comment:

The Department failed to provide an adequate cost-benefit analysis in explanation of the proposed Title X revisions, omitting indirect transaction and health costs, and the distributional effects of these costs, thereby misrepresenting the true impacts of the rule to the public.⁸

³ Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011) (online at www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf).

⁴ Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993) (online at www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf).

⁵ Letter from Senator Margaret Wood Hassan and Senator Kamala D. Harris to Alex M. Azar, Secretary, Department of Health and Human Services, and Neomi Rao, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (July 27, 2018) (online at www.hassan.senate.gov/imo/media/doc/180726.HassanHarris_Letter_AzarRao_TitleX.pdf); Letter from Democratic Members of the Maryland Congressional Delegation to Alex M. Azar, Secretary, Department of Health and Human Services, and Neomi Rao, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (July 27, 2018) (online at <https://cummins.house.gov/sites/cummins.house.gov/files/07-27-2018.%20EEC%20and%20Maryland%20Delegation%20to%20Azar%20Rao%20re%20Title%20X%20gag%20rule%20proposed%20by%20HHS.pdf>); Letter from Ranking Member Patty Murray, Senate Committee on Health, Education, Labor, and Pensions, to Alex M. Azar, Secretary, Department of Health and Human Services (Aug. 27, 2018) (online at www.help.senate.gov/imo/media/doc/2018_08_27_HHS%20Title%20X%20final.pdf).

⁶ eRulemaking Program Management Office, *Compliance with Statutory Program Integrity Requirements* (HHS-OS-2018-0008) (online at www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=HHS-OS-2018-0008) (accessed Feb. 14, 2019).

⁷ Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993) (online at www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf); Office of Management and Budget, *Circular A-4* (Sept. 17, 2003) (online at www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf).

⁸ Letter from Jack Lienke, Iliana Paul, and Jason A. Schwartz, Institute for Policy Integrity at New York

HHS also failed to account for the rule's negative health impacts on the disadvantaged populations served by Title X.⁹ In its official comment, the American Medical Association stated that the rule would "dangerously interfere with the patient-physician relationship and conflict with physicians' ethical obligations, exclude qualified providers, and jeopardize public health."¹⁰

Given the many concerns raised by experts and stakeholders, the significant public health and economic implications of the rule, and the troubling irregularities of the regulatory process, we request that OIRA return the rule to HHS so that it can perform a comprehensive regulatory impact analysis and provide stakeholders additional opportunity for public comment. In addition, we request that you produce the following documents by February 28, 2019:

1. All documents, including internal and external analyses, concerning the expected economic and health impacts of the proposed Title X rule;
2. All communications among officials at the Office of Management and Budget, OIRA, HHS, the Centers for Medicare and Medicaid Services, or the Department of Justice concerning the regulatory review process for the proposed or final Title X rules; and
3. Any communications, excluding public comments, between officials at the Office of Management and Budget, OIRA, HHS, the Centers for Medicare and Medicaid Services, or the Department of Justice with outside entities concerning the proposed or final Title X rules.

University School of Law, to Office of Population Affairs, U.S. Department of Health and Human Services (July 31, 2018) (online at www.regulations.gov/document?D=HHS-OS-2018-0008-192646).

⁹ Letter from Georges C. Benjamin, Executive Director, American Public Health Association, to Alex M. Azar, Secretary, Department of Health and Human Services, Valerie Huber, Senior Policy Advisor and Assistant Secretary for Health, Department of Health and Human Services, and Diane Foley, Deputy Assistant Secretary for Population Affairs, Office of Population Affairs, Office of the Assistant Secretary for Health, Department of Health and Human Services (July 30, 2018) (online at www.apha.org/-/media/files/pdf/advocacy/testimonyandcomments/180730_title_x_comments.ashx?la=en&hash=2807BECDCCE68F75F79F96EF2B2DEA53A240FFFE); Letter from Dana Singiser, Vice President of Public Policy and Government Relations, Planned Parenthood Action Fund, Planned Parenthood Federation of America, to Alex M. Azar, Secretary, Department of Health and Human Services, Valerie Huber, Senior Policy Advisor and Assistant Secretary for Health, Department of Health and Human Services (July 31, 2018) (online at www.regulations.gov/document?D=HHS-OS-2018-0008-198841).

¹⁰ Letter from James L. Madara, MD, Chief Executive Officer and Executive Vice President, American Medical Association, to Alex M. Azar, Secretary, Department of Health and Human Services (July 31, 2018) (online at <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-7-31-Letter-to-Azar-re-Title-X-Comments.pdf>).

The Honorable Mick Mulvaney
The Honorable Neomi Rao
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The House Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.


An attachment to this letter provides additional instructions for responding to this request. If you have any questions regarding this request, please contact Oversight Committee staff at (202) 225-5051 or Health, Education, Labor, and Pensions Committee staff at (202) 224-0767.

Thank you for your attention to this matter.

Sincerely,



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform



Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions



Margaret Wood Hassan
United States Senator



Kamala D. Harris
United States Senator

Enclosure

cc: The Honorable Alex M. Azar II, Secretary,
U.S. Department of Health and Human Services

The Honorable Jim Jordan, Ranking Member,
House Committee on Oversight and Reform

The Honorable Lamar Alexander, Chairman,
Senate Committee on Health, Education, Labor and Pensions