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

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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.”


Family Planning Services Grants

Services

In FY2017, OPA used approximately 90% of Title X funds for clinical services. 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. These services must be provided “without coercion and with respect for the privacy, dignity, social, and religious beliefs of the individuals being served.”

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.

Client Charges

Priority for services is given to persons from low-income families, who may not be charged for care. 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.

Client Characteristics

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

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8 GSA, Assistance Listings, Family Planning Services, Program number 93.217, https://beta.sam.gov/fal/44fc3928b1acea872df90344684896fb/view. See also 42 C.F.R. §59.5.


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.

guidelines, and 87% had incomes at or below 200% of the federal poverty guidelines.\textsuperscript{13} An earlier survey found that for 61% of female clients, Title X clinics were their “usual” or only regular source of health care.\textsuperscript{14} In 2017, 42% of Title X clients were uninsured.\textsuperscript{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).\textsuperscript{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**

![Figure 1](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,\textsuperscript{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

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\textsuperscript{13} Fowler et al., *Family Planning Annual Report: 2017 National Summary*, pp. 9, 21-23.

\textsuperscript{14} 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.


\textsuperscript{16} Ibid., p. A-6.

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, 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); and
- clinical guideline changes, such as Pap tests now being recommended every three years instead of annually.

**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.

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. 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.

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22 42 C.F.R. §59.7(e).

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

27 GSA, Assistance Listings, Family Planning Service Delivery Improvement Research Grants, Program number 93.974, https://beta.sam.gov/fal/1ef4e48c545163457c9f2bd0fc525e1c/view.
28 To view examples of recent research grant award titles, see HHS, Tracking Accountability in Government Grants, https://taggs.hhs.gov/saved-search/vvvoor.
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, 2017, the Department of Health and Human Services issued a Directive instructing grantees that “they may provide objective, neutral information about pregnancy termination services, including abortion.”\(^{35}\)

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\(^{31}\) 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).  


\(^{34}\) 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.” 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. 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.

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. 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. The program’s FY2019 goals include preventing 903,000 unintended pregnancies and reducing infertility by screening 1.2 million young women for chlamydia. 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. 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. The *Justification* emphasizes

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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*.


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.” 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.”

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.” 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.” 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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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.
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...

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\(^{49}\) 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).


\(^{52}\) 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.”


\(^{54}\) 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).
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 prohibition 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’

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\(^{55}\) 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.”


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).

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

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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.
Abortion and Title X

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

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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.


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.”

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. 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.

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.

In 2004, following appropriations conference report directions, HHS surveyed its Title X grantees on whether their clinic sites also provided abortions with nonfederal funds. Grantees were informed that responses were voluntary and “without consequence, or threat of consequence, to non-responsiveness.” 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

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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).


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.


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


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


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.


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

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

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.


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.

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.  

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. 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. 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. 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. According to OPA, Title X clinics “commonly forgo billing” health insurers to maintain confidentiality.


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.


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.”

Program requirements instruct that “eligibility for discounts for unemancipated minors who receive confidential services must be based on the income of the minor.”

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.

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.”

### 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. 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.

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.

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. These figures reflected funds

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

89 42 C.F.R. §59.2.


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

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97 Table 30, 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.


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. Some grantees feared services could be interrupted because of a potential lapse in grant funding. 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.”

**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. 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.
- 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.

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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).


104 FY2018 FOA, p. 9.

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). 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.”

Both FOAs required that projects encourage family participation with respect to services to minors. But unlike the FY2017 FOA, the FY2018 FOA additionally stated that this requirement applied to all clients, not just to minors. 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.”

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.” The FY2017 FOA did not mention onsite or nearby primary care, but it did list among the program’s priorities: “Addressing the comprehensive health needs of clients through formal, robust linkages or integration with comprehensive primary care providers.”

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. In contrast, under the FY2018 FOA, final award selections were made by the DASPA or designee. 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.

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106 FY2017 FOA, p. 10.
108 FY2017 FOA, pp. 6, 7, 20, and 40. FY2018 FOA, pp. 8, 10, and 22.
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.”

The FY2018 FOA encouraged applications for “innovative” services and methods that had been “historically underrepresented” in the Title X program. 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. A Questions and Answers document accompanying the FY2018 FOA did clarify that projects must provide contraception.

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.” 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),


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.


120 FY 2018 Title X Family Planning Services Funding Opportunity Announcement: Questions and Answers, 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/mq6o9.
although program guidance states that “shorter or longer budget periods may be established for compelling administrative or programmatic reasons.” Continuing awards are contingent on factors such as appropriations, grantees’ compliance with federal requirements, and the best interests of the government. 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.”

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.” The rule became effective January 18, 2017, but P.L. 115-23 nullified the rule on April 13, 2017.

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.

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. As a result, the rule “shall be treated as though such rule had never taken effect.” 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

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121 HHS, OPA, Program Requirements for Title X Funded Family Planning Projects, April 2014, p. 10.
122 FY2018 FOA, p. 56.
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?”
“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

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

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