

TRUMP-PENCE ADMINISTRATION GAG RULES— ENEMIES OF PUBLIC HEALTH AT HOME AND ABROAD

	GLOBAL GAG RULE	TITLE X DOMESTIC FAMILY PLANNING RULE
HOW POLICY PROMULGATED	Presidential Memorandum—January 23, 2017	Compliance with Statutory Program Requirements —final rule published in the <i>Federal Register</i> on March 4, 2019
EFFECTIVE DATE OF THE RESTRICTIONS	In force as of May 15, 2017 with issuance of “ Standard Provisions ” to be included in the grants and cooperative agreements of recipient organizations	<ul style="list-style-type: none"> • Most provisions in effect 60 days after publication of the final rule in the <i>Federal Register</i>; • One-year implementation period for the rule’s “physical separation” requirement; • Requirements related to “financial separation,” compliance for subrecipients, referrals to primary care providers, family participation, no abortion referral, grantee selection criteria, “transparency” in service delivery, compliance with reporting of abuse and trafficking and other reporting compliance, as well as removal of the current requirement for consultation with local stakeholders on grant applications, in effect 120 days after publication of the final rule; and • Litigation may further delay implementation and enforcement
U.S. GOVERNMENT (USG)-FUNDED PROGRAMS TO WHICH THE RESTRICTIONS APPLY	“Global health assistance furnished by all departments and agencies”	“Grants... to assist in the establishment of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children”
IMPACTED PROGRAM BENEFICIARIES	Hundreds of millions of women, men, families and communities in low-income developing countries overseas	Four million adults and adolescents, primarily those with low incomes or who are uninsured or underinsured in the United States
AFFECTED ORGANIZATIONS AND INSTITUTIONS	<p>Non-U.S. nongovernmental organizations (NGOs), both nonprofit and for-profit</p> <p>The most notable foreign NGOs losing USG funding to date are Marie Stopes International and International Planned Parenthood Federation, but the list is expected to grow with the application of restrictions to all recipients of U.S. global health assistance</p>	<p>All recipients of Title X domestic family planning funding would be subject to the rule’s requirements and at risk of losing federal funds under the final regulation</p> <p>This includes U.S. NGOs—such as Planned Parenthood affiliates and other nonprofit community health care clinics and providers—hospitals, and state and local health departments</p>
USG DEPARTMENTS AND AGENCIES IMPLEMENTING	<ul style="list-style-type: none"> • U.S. Agency for International Development (USAID) • State Department—including the President’s Emergency Plan for AIDS Relief (PEPFAR) • Department of Health and Human Services • Department of Defense 	<ul style="list-style-type: none"> • Department of Health and Human Services
STATUTORY AUTHORITY	<p>Foreign Assistance Act of 1961—the permanent foreign aid authorizing statute</p> <p>Provisions contained in the annual State Department, Foreign Operations, and Related Programs Appropriations Act</p>	<p>Title X of the Public Health Service Act, enacted 1970</p> <p>Provisions contained in the annual Labor, Health and Human Services, Education, and Related Agencies Appropriations Act</p>

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TYPE OF RESTRICTION	Eligibility condition—organization is rendered ineligible for USG global health assistance if it engages in prohibited activities	Eligibility condition—a program or project is rendered ineligible for domestic family planning grants if it engages in prohibited activities
PROHIBITED ABORTION-RELATED ACTIVITIES	<ul style="list-style-type: none"> Perform, counsel, refer or advocate on abortion “as a method of family planning,” even if activities supported with non-U.S. funds Provide “financial support to any other foreign nongovernmental organization that conducts such activities” 	<ul style="list-style-type: none"> “A Title X project may not perform, promote, refer for, or support, abortion as a method of family planning, nor take any other affirmative action to assist a patient to secure such an abortion”
DEFINITION OF “ABORTION AS A METHOD OF FAMILY PLANNING”	<ul style="list-style-type: none"> Defined as “when it is for the purpose of spacing births,” including, but not limited to, abortions “performed for the physical and mental health of the mother” and for “fetal abnormalities,” but does NOT include abortions performed in the cases of life endangerment, rape or incest Post-abortion care allowed—“treatment of injuries or illnesses caused by legal or illegal abortions” 	<ul style="list-style-type: none"> Not specifically defined in the final rule
COUNSELING AND REFERRAL FOR ABORTION	<ul style="list-style-type: none"> Permissible in cases of threat to the life of the woman, rape or incest If abortion is legal in a recipient country for reasons broader than life endangerment, rape or incest, referral for abortion is severely restricted and permitted only if all four of the following conditions are met: <ul style="list-style-type: none"> Woman is already pregnant; Woman “clearly states that she has already decided” to have an abortion; Woman “specifically asks” where a legal abortion may be obtained, and Health care provider has reason to believe that the country’s medical ethics require providing a referral for a legal abortion 	<ul style="list-style-type: none"> Referral for abortion by medical personnel in a federally funded family planning project would be barred with expansive “requirements and limitations with respect to post-contraception activities,” which prohibit grantees from making abortion referrals or taking “any other affirmative action to assist a patient to secure such an abortion,” require referrals for prenatal care (regardless of the pregnant woman’s wishes) and limit pregnancy options counseling to doctors and advanced practice providers (not nurses, health educators or clinical social workers) A pregnant client “shall be referred to a health care provider for medically necessary prenatal care” A pregnant client may be provided with “nondirective” pregnancy counseling, a list of primary health care providers, referral to social services or adoption agencies, “and/or [emphasis added] information about maintaining the health of mother and unborn child during pregnancy” “[Federally funded family planning] project may not use the provision of any prenatal, social service, emergency medical, or other referral, of any counseling, or any provider lists, as an indirect means of encouraging or promoting abortion as a method of family planning” The list of primary health care providers furnished to a pregnant client “may be limited to those that do not provide abortion, or may include [providers] some, but not the majority, of which also provide abortion as part of their comprehensive health services. Neither the list nor project staff may identify which providers on the list perform abortion” Proposed regulation also lists six “examples” or scenarios that seek to clarify what may or may not be permissible with regard to counseling and referral for abortion

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LOBBYING OR ADVOCACY ON ABORTION	<ul style="list-style-type: none"> Foreign NGOs receiving U.S. global health assistance may not lobby their government to legalize or to “continue the legality” of abortion in cases other than life endangerment, rape or incest Foreign NGOs may not conduct “a public education campaign... regarding the benefits and/or availability of abortion” 	<ul style="list-style-type: none"> Restrictions on activities that “encourage, promote or advocate for abortion,” including actions in the funded project “that assist women to obtain abortions for family planning purposes or to increase the availability or accessibility of abortion for family planning purposes” are more detailed in the domestic regulations Prohibited actions using project funds include: <ul style="list-style-type: none"> “Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning”; “Providing speakers or educators who promote the use of abortion as a method of family planning”; “Attending events or conferences during which they” engage in lobbying on abortion; Dues payment to a group that advocates on abortion that does not “separately collect and segregate funds used for lobbying purposes”; Engaging in litigation to increase availability of abortion “in any way as a method of family planning”; and “Developing or disseminating in any way materials (including printed matter, audiovisual materials and web-based materials) advocating abortion as a method of family planning” Final regulation also lists eight “examples” or scenarios that seek to clarify what may or may not be permissible with regard to abortion advocacy or promotion
INDIVIDUAL VS. ORGANIZATIONAL ACTION	<ul style="list-style-type: none"> An individual associated with a foreign NGO subject to the policy may engage in activities in their private capacity that would be prohibited if carried out by the organization itself An individual may engage in such otherwise restricted activities as long as: <ul style="list-style-type: none"> The individual is “neither on duty nor acting on the organization’s premises”; The organization does not endorse or fund the action; and “Reasonable steps” are taken to ensure that the individual does not “improperly represent” that they are acting on behalf of the organization 	<ul style="list-style-type: none"> Among the eight “examples” related to abortion advocacy or promotion are two with relevance to the question of individual vs. organizational action, specifically: <ul style="list-style-type: none"> Employees of a federally funded project may “write their legislative representative in support of legislation” to expand legal access to abortion “in their personal capacities and using no project funds to do so”; and A project employee may speak before a legislative body in support of “abortion as a method of family planning” so long as it is “on her own time and at her own expense”

IMPORTANT EXPLANATORY NOTE

The chart above is intended to compare the abortion-related restrictions contained in the Trump-Pence administration’s expanded [Global Gag Rule](#) with the final Title X [domestic family planning rule](#), published in the *Federal Register* on March 4, 2019.

The chart is not meant to be an inclusive summary of all of the elements of the final Title X domestic family planning rule—only those provisions that have a direct counterpart in the Global Gag Rule, referred to by the Trump-Pence administration as the Protecting Life in Global Health Assistance (PLGHA) policy.