IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD OF GREATER NEW YORK, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Case No. 1:25-cv-01334-TJK

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs, all applicants for continued government funding, have run to Court seeking an injunction over a guidance document that asks them to provide additional information in their grant applications. The Court should not entertain Plaintiffs' motion, as they have not satisfied the demanding standards for preliminary injunctive relief.

To start, Plaintiffs cannot establish irreparable harm. The U.S. Department of Health and Human Services (HHS), which administers the Teen Pregnancy Prevention Program ("TPP Program"), is currently evaluating continuation funding applications for the upcoming year and will issue funding decisions on or around June 30. For the Plaintiffs who applied for continuation funding, their alleged irreparable harm—*i.e.*, that they will be denied funding—is pure speculation that cannot support an injunction. Even more, because of the non-competitive nature of TPP Program grants, HHS commits to hold the maximum amount of continuation funding available to Plaintiffs beyond the end of the current funding period, until August 31, without disbursing or obligating those funds. Thus, to the extent Plaintiffs could articulate a viable claim after HHS makes a funding decision, there is ample time for Plaintiffs to seek redress, meaning that injunctive relief *now* is foreclosed.

Plaintiffs' motion should be denied for other reasons, too. Their Due Process Clause claim fails at the outset, because the void-for-vagueness doctrine does not apply when the government acts as benefactor, and because Plaintiffs lack a constitutionally protected property interest in continued funding. Plaintiffs' constitutional claim also fails on the merits, as the March 2025 guidance they challenge merely asks Plaintiffs to explain how they intend to comply with preexisting obligations.

Plaintiffs are also unlikely to prevail on their Administrative Procedure Act (APA) claims.

At the threshold, Plaintiffs do not challenge any final agency action, and HHS's decision to issue guidance for applications under the TPP Program is purely discretionary and thus unreviewable. And on the merits, Plaintiffs cannot demonstrate that the challenged guidance document is contrary to law or arbitrary and capricious.

Plaintiffs' ultra vires claim also cannot justify a preliminary injunction. Instructions to applicants for continued funding are not the stuff of ultra vires review, and Plaintiffs can point to no clear and unambiguous (or indeed any) statutory violation that would give rise to a plausible ultra vires claim.

And, finally, as to the balance of the equities, the broad injunctive relief that Plaintiffs seek would upend HHS's consideration of TPP Program applications for the coming year, and Plaintiffs will not suffer any harm in the absence of injunctive relief. So that factor weighs against granting an injunction as well.

BACKGROUND

I. The TPP Program Appropriation

Since 2010, Congress has appropriated money to HHS annually for "grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy." *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4876 (2022). There are two funding categories, referred to as Tier 1 and Tier 2. After program support expenses, three-quarters of the appropriation goes to Tier 1 projects for "replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavior[] risk factors underlying teenage pregnancy, or other associated risk factors." *Id.* Remaining funds go to Tier 2 projects for "research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage

pregnancy." *Id.* Only Tier 1 projects are at issue in this case.

HHS solicited applications for TPP Program grant funds in April 2023 through a Notice of Funding Opportunity (NOFO). *See* Pls.' Ex. 1, ECF No. 8-2. Applicants could request funding from $350,000 to $2 million per year for a period of up to five years. *Id.* at 4. Applications for TPP Program funds go through a formalized agency review process laid out in the NOFO before final decisions are made and funds are obligated. After initial selection for funding, for each year of the approved period of performance, grant recipients are required to submit a noncompeting application for funds. *Id.* at 16. That application requires grantees to submit a "progress report for the current budget year, [a] work plan, [and] budget and budget justification for the upcoming year." *Id.* at 16-17, 56. HHS awards continuation funding based on "availability of funds, satisfactory progress of the project, grants management compliance, including timely reporting, and continued best interests of the government." *Id.* at 56.

As part of the registration process to receive funding, the NOFO required applicants to certify that they will comply "with all applicable requirements of all other federal laws, executive orders, regulations, and public policies governing financial assistance awards[.]" *Id.* at 61–62. The Notice of Award provided to Tier 1 funding recipients, under its "Standard Terms," further states that "[t]he recipient must comply with all terms, conditions, and requirements outlined in this Notice of Award, including[] . . . [a]ll requirements imposed by program statutes and regulations, Executive Orders, and HHS grant administration regulations, as applicable. . . ." *See* Notice of Award at 5–6 (attached as Ex. A).[1]

[1] Defendants' Exhibit A is the redacted Notice of Award for Plaintiff Planned Parenthood California Central Coast. The Notices of Award for the other four Plaintiffs contain the same terms and requirements.

II. HHS Guidance for 2025 Continuation Award Applications

In January 2025, HHS issued guidance for funding recipients to apply for continuation awards in the third year of funding, to cover July 1, 2025 through June 30, 2026. Pls.' Ex. 4, ECF No. 8-5. The January 2025 guidance set an application deadline of April 15, 2025. *Id.* at 2, 15. Among other requirements, the January 2025 guidance instructed applicants to provide a project narrative for work to be performed in the upcoming year, including a brief summary of any proposed changes to the project work plan from the previous budget year, and a work plan to address expectations set forth in the NOFO. *Id.* at 5.

HHS provided updated guidance to applicants on March 31, 2025 ("March 2025 guidance"). Pls.' Ex. 2, ECF No. 8-3. The March 2025 guidance largely mirrors the guidance HHS provided in January 2025. The March 2025 guidance, however, added additional instructions that recipients of funding are "expected to review and be aware of current Presidential Executive Orders," and the March 2025 guidance stated that recipients should "revise their projects, as necessary, to demonstrate that the [non-competing continuation] award application is aligned with current Executive Orders." *Id.* at 4. The March 2025 guidance states that "[r]ecipients should review and be aware of all current Presidential Executive Orders; however, the following may be of most relevance to the work of the TPP program":

- Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*;
- Executive Order 14190, *Ending Radical Indoctrination in K-12 Schooling*;
- Executive Order 14187, P*rotecting Children From Chemical and Surgical Mutilation*;
- Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*;
- Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*.

Id. at 4–5. The March 2025 guidance further instructed applicants to include in the project narrative accompanying their applications a "[d]escription of changes made to align with Executive Orders, if applicable," including "the steps taken to review the project and identify the modifications proposed." *Id.* at 5. It provided examples of changes that recipients may make to align their projects, such as "selecting a different evidence-based program for implementation, making adaptations to existing curriculum, and updating policies, staffing, and training, etc." *Id.* It also instructed applicants to provide a brief summary of any proposed substantial changes to the project work plan from the previous budget; to provide a work plan that "address[es] the expectations outlined in the original NOFO, to the extent aligned with Presidential Executive Orders;" and to "submit program materials to [the Office of Population Affairs] for review" by uploading them as an appendix through the online portal for grant applications. *Id.* at 5, 15.

Of the 55 grantees who received funding from the 2024 appropriation, 54 submitted an an application for continuation funding by the April 15, 2025 deadline. *See* Declaration of Amy Margolis ("Margolis Decl.") ¶ 5 (attached as Ex. B).

III. Plaintiffs' Funding Applications

Plaintiffs are five not-for-profit organizations that received Tier 1 finding awards for a period of up to five years pursuant to the NOFO. *See* Compl. ¶ 50, ECF No. 1. They are Planned Parenthood of Greater New York (PPGNY); Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana and Kentucky (PPGNHAIK), Planned Parenthood of the Heartland, Inc. (PPH); Planned Parenthood California Central Coast (PPCCC); and Planned Parenthood Mar Monte (PPMM). All five Plaintiffs received continuation awards for 2024. *Id.*

For 2025, four of the five Plaintiffs—PPGNY, PPGNHAIK, PPCCC, and PPH—submitted applications for continued funding. *Id.* ¶ 111. As Plaintiffs explain, "some Plaintiffs submitted

applications stating that no meaningful changes had been made to the programs to 'align' with the Executive Orders," while "[o]thers noted the lack of clarity about the requirement to 'align' with Executive Orders, but explained their attempts to make some changes" in response to the March 2025 guidance. *Id.* PPMM did not apply for continued funding. *Id.*

IV. This Litigation

Plaintiffs filed their complaint in this action on May 1, 2025. ECF No. 1. The complaint contains four claims. In Count I, Plaintiffs allege, through the APA, that the NCC Notice violates Plaintiffs' purported rights under the Due Process Clause. *Id.* ¶¶ 153–66. In Counts II and III, Plaintiffs allege that, in issuing the March 2025 guidance, HHS acted arbitrarily and capriciously, and in violation of the law, and therefore violated the APA. *Id.* ¶¶ 167–93. And in Count IV, Plaintiffs claim that HHS's issuance of the March 2025 guidance was ultra vires. *Id.* ¶¶ 194–200.

Plaintiffs moved for a preliminary injunction on May 12. Mot. for Prelim. Inj., ECF No. 8. Plaintiffs ask the Court to enjoin HHS from (1) requiring any Tier 1 funding recipients to modify their programs to align with Executive Order, (2) requiring any Tier 1 funding recipients to demonstrate or certify alignment with Executive Orders; (3) requiring any Tier 1 funding recipients to submit program materials demonstrating alignment with Executive Orders or to memorialize changes to the programs they implement to align with Executive Orders; or (4) denying any Tier 1 non-competing continuation award application on the ground that the application fails to align with, to document changes to evidence-based programs to align with, or to certify alignment with Executive Orders. Proposed Order at 1–2, ECF No. 8-14. Plaintiffs also seek an injunction requiring HHS to "reopen the period for Tier 1 non-competing continuation award applications to permit applicants to submit applications without regard to" the March 2025 guidance, "regardless

whether such applicants have already submitted a non-competing continuation award application[.]" *Id.* at 2.

STANDARD OF REVIEW

"The standard for issuance of the extraordinary and drastic remedy of . . . a preliminary injunction is very high." *Jack's Canoes & Kayaks, LLC v. Nat'l Park Serv.*, 933 F. Supp. 2d 58, 75 (D.D.C. 2013) (citation omitted). An interim injunction is "never awarded as of right," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted), and "should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion[,]" *Cobell v. Norton*, 391 F. 3d 251, 258 (D.C. Cir. 2004) (citation omitted).

A party moving for a preliminary injunction must demonstrate all of the following factors: "(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction is not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Jack's Canoes*, 933 F. Supp. 2d at 75–76 (quoting *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995)). Where, as here, the government is opposing a motion for emergency injunctive relief, the third and fourth factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Plaintiffs Cannot Demonstrate Irreparable Harm.

In this Circuit, there is a "high standard for irreparable injury." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). Any alleged irreparable harm "must be both certain and great; it must be actual and not theoretical." *Id.* (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam). It also must be of such "*imminence* that there is a clear and present' need for equitable relief." *Id.* (quoting *Wis. Gas Co.*, 758 F.2d at 674). A

motion for preliminary injunction can be denied solely on the basis that the plaintiffs have failed to demonstrate irreparable injury. *See id.* ("A movant's failure to show any irreparable harm is therefore grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief." (citing *Sea Containers Ltd. v. Stena AB*, 890 F.2d 1205, 1210–11 (D.C. Cir. 1989))). Plaintiffs have failed to meet this standard.

Plaintiffs' alleged irreparable harm is the economic injury the five organizations will purportedly suffer if continuation funding is denied based on the March 2025 guidance. *See* Mem. in Supp. of Pls.' Mot. for Prelim. Inj. at 38–42, ECF No. 8-1 ("Mot."). Yet, it is entirely premature and speculative to assume—as is required to accept Plaintiffs' irreparable harm arguments—that continuation funding will be denied. The Court need only look at Plaintiffs' own language in their brief to conclude their alleged injury is neither certain nor imminent. Plaintiffs state that, "*[i]f* Plaintiffs' continuation applications are denied . . . . Plaintiffs *could* face abrupt termination of all funding[.]" Mot. at 39 (emphasis added). They go on to say that "[t]he harm from this loss of funds *would be* tremendous and irreparable," and that, "*[i]f* Plaintiffs are foreclosed from obtaining their TPP funds," their projects will suffer. *Id*. at 40 (emphasis added). These sorts of hypotheticals cannot justify a preliminary injunction.

In short order, HHS will make a funding decision on Plaintiffs' applications, and—except for PPMM, which chose not to apply for continuation funding—it is pure speculation to assume that their requests for continued funding will be denied. The March 2025 guidance "prescribes the content, information, and requirements" for applications, ECF No. 8-2 at 3, but nothing in that document precludes HHS from awarding continuation funding to any of the Plaintiffs who applied. It is therefore a purely theoretical possibility that the organizations that applied will not receive

funding—hardly the type of "certain and great" harm that is required for a preliminary injunction. *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

And, as for PPMM, its alleged harm is not the result of the March 2025 guidance but rather its own decision not to apply for funding. *See Alcresta Therapeutics, Inc. v. Azar*, 755 F. App'x 1, 6 (D.C. Cir. 2018) ("Of course it is not enough for Appellants to demonstrate irreparable harm of any sort. The alleged harm must 'directly result from the action which the movant seeks to enjoin.'" (quoting *Wis. Gas Co.*, 758 F.2d at 675)). Among the 55 grantees who received funding from the 2024 appropriation, PPMM stands alone in failing to apply. *See* Margolis Decl. ¶ 5. PPMM's independent decision not to apply for continuation funding—when even the other Plaintiffs in this case submitted applications, not to mention the dozens of other recipients participating in the program—is sufficient to preclude injunctive relief as to that organization. An organization is not entitled to receive funding it did not apply for. *See* NOFO, ECF No. 8-2 at 16–17 ("Recipients will be required to submit a non-competing continuation application for each budget period after the first.").[2]

Plaintiffs attempt to explain away PPMM's failure to apply, stating that PPMM "was unable to identify any changes it could make and documentation that it could submit, even under protest, without abandoning all of the essential components of its projects and organizational mission." Compl. ¶ 111. But that explanation is hard to square with Plaintiffs' claims that the March 2025 guidance is "completely unclear[.]" Mot. at 24. Other recipients, moreover, like PPGNY, did not make any proposed changes in response to the March 2025 guidance, but still

[2] There are independent reasons, moreover, why PPMM may not have received continuation funding. HHS has flagged PPMM for poor performance for serving less than 5 percent of the total number of youth it planned to reach on an annual basis in its original grant application. Margolis Decl. ¶ 4.

applied. *See* Compl. ¶¶ 115–16.

The speculative nature of Plaintiffs' alleged irreparable harm is enough to deny Plaintiffs' motion. But Plaintiffs are not entitled to a preliminary injunction for another reason. As Plaintiffs point out (Mot. at 42), courts have found irreparable harm in situations where grant funding will be obligated to other grantees, making the funds the plaintiffs would otherwise receive unrecoverable. *See, e.g.*, *Climate United Fund v. Citibank, N.A.*, No. 25-cv-698, 2025 WL 1131412, at *17 (D.D.C. Apr. 16, 2025) ("[I]n cases involving government expenditures, *once the relevant funds have been obligated*, a court cannot reach them in order to award relief." (emphasis added) (quotation omitted)); *Ambach v. Bell*, 686 F.2d 974, 986 (D.C. Cir. 1982) ("Once the chapter 1 funds are *distributed to the States and obligated*, they cannot be recouped." (emphasis added)). Here, however, as established by the accompanying declaration of Amy Margolis, Deputy Director of HHS's Office of Population Affairs, HHS will *not* obligate the funds Plaintiffs seek immediately upon a decision on continuation funding applications. *See* Margolis Decl. ¶ 3. Rather, HHS will keep the funds available until August 31. *Id.* And HHS can backdate those funds to July 1, *id.*, meaning that, hypothetically, if Plaintiffs are denied continuation funding and Plaintiffs were to prevail on a challenge to that decision, Plaintiffs could use those funds to cover any interim expenditures. *Id.*[3]

The linchpin of Plaintiffs' irreparable harm argument is therefore missing. Mot. at 42 (arguing that, "absent immediate relief, the funding that Plaintiffs rely upon may become unrecoverable"). The general rule in this Circuit is that "injuries are not 'irreparable' if there is a

[3] During discussions over the briefing schedule for Plaintiffs' motion, and to explore the possibility of avoiding preliminary injunction proceedings, counsel for Defendants informed counsel for Plaintiffs that HHS would be willing to hold the relevant continuation funding past June 30. Plaintiffs, however, opted to continue to pursue relief before the upcoming continuation funding decisions.

'possibility' that 'adequate compensatory or other corrective relief will be available at a later date.'" *Univ. of Cal. Student Ass'n v. Carter*, --- F. Supp. 3d ---, 2025 WL 542586, at *6 (D.D.C. Feb. 17, 2025) (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297); *see also Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury.").

Because the funds Plaintiffs seek will not be obligated upon HHS's continuation funding decision—which is scheduled to come on or before June 30—Plaintiffs cannot show that "an injunction must be imposed *now*, as opposed to once grant allocations have been determined or announced." *Ohio v. Becerra*, No. 21-4235, 2022 WL 413680, at *4 (6th Cir. Feb. 8, 2022); *see also Ohio v. Becerra*, 87 F.4th 759, 782–83 (6th Cir. 2023) (finding irreparable harm only for the plaintiff that had provided concrete evidence of economic injuries resulting from the challenged grant awards). If, hypothetically, Plaintiffs do not receive continuation funding, they would have ample time—a full two months—to seek any appropriate relief. *See* Margolis Decl. ¶ 3.

Given Plaintiffs' failure to establish irreparable harm resulting from the March 2025 guidance, Plaintiffs' motion for a preliminary injunction should be denied.

II. Plaintiffs Are Unlikely to Prevail on the Merits of Their Claims.

A. Plaintiffs Are Unlikely to Prevail on Their Fifth Amendment Claim.

Plaintiffs challenge the March 2025 guidance under the Due Process Clause, arguing that the March 2025 guidance is void for vagueness. Plaintiffs' claim fails at the threshold and on the merits.

1. Plaintiffs Lack a Constitutionally Protected Interest Required for Due Process Protections to Attach.

To begin with, the void-for-vagueness doctrine under the Fifth Amendment is inapplicable here. "The void-for-vagueness doctrine . . . guarantees that ordinary people have 'fair notice' of

the conduct a *statute* proscribes." *Sessions v. Dimaya*, 584 U.S. 148, 155–56 (2018) (plurality opinion) (emphasis added) (citation omitted). And although courts have applied this doctrine outside of the statutory context, they have done so with respect to regulations of primary conduct. *See, e.g.*, *FCC v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012) ("A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." (citation omitted)); *Karem v. Trump*, 960 F.3d 656, 664 (D.C. Cir. 2020) (noting that the Fifth Amendment's "requirement of clarity" applies when the government imposes "civil penalties" (citations omitted)).

There is good reason for the doctrine's limited reach. The Due Process Clause prohibits uneven enforcement, and ensures notice, of requirements with which the public must comply. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). No such concerns arise in the context of government grants, where the government is acting as a benefactor, and, indeed, "courts have resisted" applying "due process principles to government contracts" outside "the employment context." *New Vision Photography Program, Inc. v. District of Columbia*, 54 F. Supp. 3d 12, 29 (D.D.C. 2014).

Even if the Court were to conclude that the Due Process Clause can reach beyond the regulation of primary conduct, Plaintiffs are unlikely to prevail because they lack an interest that the Due Process Clause protects. As this Court explained recently in *National Urban League v. Trump*, "[a] void-for-vagueness challenge is, at bottom, a due process claim, so Plaintiffs must show that they were deprived of a constitutionally-protected property or liberty interest." --- F. Supp. 3d ----, 2025 WL 1275613, at *18 (D.D.C. May 2, 2025) (citations omitted). And the "first

inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in liberty or property." *Id.* (quoting *NB ex rel. Peacock v. District of Columbia*, 794 F.3d 31, 41 (D.C. Cir. 2015)).

Plaintiffs do not assert that they have a protected liberty interest; they rely only on an alleged property interest "in receiving money from a successful non-competing continuing award application under the TPP program." Mot. at 22. The procedural component of the Due Process Clause, however, "does not protect everything that might be described as a 'benefit': 'To have a property interest in a benefit, a person clearly must have more than an abstract need or desire'" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Town of Castle Rock v. Gonzalez*, 545 U.S. 748, 756 (2005) (citation omitted).

Applying these principles, the Supreme Court has identified a narrow set of government benefits, so-called "new property," that are protected under the Due Process Clause. *See Perry v. Sindermann,* 408 U.S. 593 (1972) (tenured teaching position); *Goldberg v. Kelly,* 397 U.S. 254 (1970) (welfare benefits); *see also Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972) (collected cases). The due process protections afforded to this set of entitlement-like benefits, however, have not been extended to "'ordinary' or 'routine' government contracts." *Gizzo v. Ben-Habib*, 44 F. Supp. 3d 374, 385 (S.D.N.Y. 2014); *see also Redondo-Borges v. U.S. Dep't of Hous. & Urb. Dev.*, 421 F.3d 1, 10 (1st Cir. 2005) ("We have held with a regularity bordering on the echolalic that a simple breach of contract does not amount to an unconstitutional deprivation of property."); *New Vision Photography*, 54 F. Supp. 3d at 29 ("The Supreme Court 'has never held that government contracts for goods and services create property interests protected by due process.'" (citation omitted)).

The distinction makes sense. As the Second Circuit explained in *S & D Maintenance Co.*

v. Goldin, in the new-property line of cases, "the Due Process Clause [was] invoked to protect something more than an ordinary contractual right. Rather, procedural protection [was] sought in connection with a state's revocation of a *status*, an estate within the public sphere characterized by a quality of either extreme dependence in the case of welfare benefits, or permanence in the case of tenure[.]" 844 F.2d 962, 966 (2d Cir. 1988) (footnote omitted). The same logic does not extend to "contractual interests that are not associated with any cognizable status of the claimant beyond its temporary role as a governmental contractor." *Id.* at 967. Indeed, "the doctrinal implications of constitutionalizing all public contract rights would raise substantial concerns[.]" *Id.* at 966.

Plaintiffs do not address these principles in any meaningful way. They cite *NB ex. rel. Peacock* for the proposition that, if a "'statute or implementing regulations place substantive limitations on official discretion,'" due process protections may be required. Mot at 22 (quoting *NB ex. rel. Peacock*, 794 F.3d at 41). But Plaintiffs cite no statute or regulation that limits HHS's discretion with regard to continuation funding. Plaintiffs point to language in the NOFO to suggest they are entitled to a continuation of funding. Mot. at 22. Yet, even assuming a notice of a funding opportunity could limit the agency's discretion in a way that implicates the Due Process Clause—which it cannot for the reasons discussed above—the NOFO itself gives HHS broad discretion, including to deny continuation funding if it is not in the "continued best interests of the government." ECF No. 8-2 at 56. No constitutional property interest attaches in these circumstances.

Plaintiffs also note that "[c]ourts have applied the void-for-vagueness doctrine to review administrative action." Mot. at 22–23. Yet, none of the cases Plaintiffs cite supports the proposition that Plaintiffs have a constitutionally protected interest in receiving continuation funding resulting from a government grant. Both *Karem v. Trump*, 960 F.3d 656 (D.C. Cir. 2020), and *Sherrill v.*

Knight, 569 F.2d 124 (D.C. Cir. 1977), addressed the revocation of White House press passes—a far cry from alleged entitlement to continuation funding. The courts in those cases, moreover, concluded that the plaintiffs had a protected liberty interest in their passes. *Karem*, 960 F.3d at 665; *Sherrill*, 569 F.2d at 130–31. Plaintiffs do not assert a liberty interest here, nor could they.

Plaintiffs also cite *United States Telecom Association v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), which addressed whether the FCC could regulate the primary conduct of telecommunications providers. *Id.* at 734 (explaining that the challenged General Conduct Rule forbids broadband providers from engaging in conduct that unreasonably interferes or unreasonably disadvantages end users and edge providers). In *Timpinaro v. SEC*, 2 F.3d 453 (D.C. Cir. 1993), the court addressed a Securities and Exchange Commission rule that arguably deprived the plaintiffs of the opportunity to be heard before being designated as a "professional trader," which would prohibit access to their use of a system for trading securities. And, finally, *FCC v. Fox Television Stations, Inc.* was another case about primary regulation—specifically, the FCC sought to regulate broadcasters (subject to civil penalties) over the transmission of indecent material. *See* 567 U.S. at 254–55.

Plaintiffs' failure to cite any cases supporting their alleged property interest in the continuation of a government grant is unsurprising, given that "'ordinary' or 'routine' government contracts do not, by themselves, give rise to . . . an interest" that due process protects. *Gizzo*, 44 F. Supp. 3d at 385. Put another way, as this Court explained in *National Urban League*, Plaintiffs "offer no reason to think that their [ ] grants—which are '[o]utside of the employment context'—are different from the 'millions of government contracts in effect at any point in time' to which courts seldom apply 'due-process principles.'" 2025 WL 1275613, at *18 (quoting *New Vision Photography*, 54 F. Supp. 3d at 29 (citation omitted)). And accepting Plaintiffs' theory that they

have a property interest in continuation funding would "'risk . . . transmogrifying virtually every dispute involving an alleged breach of contract by' the government 'into a constitutional case.'" *Id*. (quoting *Redondo-Borges*, 421 F.3d at 10). Because Plaintiffs do not have a property interest in continued funding protected by the Constitution, their Due Process Clause claim necessarily fails.

2. Plaintiffs Fail to Identify Any Constitutional Deficiency.

Even if the Court were to get past that fundamental deficiency in Plaintiffs' Due Process Clause claim, Plaintiffs would still be unlikely to prevail. The thrust of Plaintiffs' Due Process Claim is purported confusion over what it means to "align" with executive orders. Mot. at 23–26. But the March 2025 guidance is not vague or ambiguous. It states—consistent with the NOFO and Notice of Award—that applicants are "expected to review and be aware of current Presidential Executive Orders," and the March 2025 guidance encouraged recipients "to revise their projects, as necessary, to demonstrate that the NCC award application is aligned with current Executive Orders." *Id.* at 14. That is consistent with, and no more vague than, the previous requirement—unchallenged by Plaintiffs—that funding recipients comply with "[a]ll requirements imposed by programs statutes and regulations, *Executive Orders*, and HHS grant administration regulations, as applicable." Ex. A at 6 (emphasis added).

Plaintiffs also argue that the March 2025 guidance is unconstitutional because it "invites arbitrary and discriminatory enforcement." Mot. at 26–27. But this claim, too, lacks merit. The Due Process Clause requires that laws "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly" and "provide explicit standards for those who apply them." *Grayned*, 408 U.S. at 108. This doctrine demands scrutiny of statutes and regulations that identify new conduct for punishment—typically in the context of

law enforcement authorities. *See Nat'l Urban League*, 2025 WL 1275613 at *19; *Act Now to Stop War & End Racism Coal. & Muslim Am. Soc'y Freedom Found. v. District of Columbia*, 846 F.3d 391, 410 (D.C. Cir. 2017) (law is "void for vagueness" when "it fails to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement" (internal quotation marks and citation omitted)). It has little, if any, application "when the Government is acting as patron rather than as sovereign," where the effects "of imprecision are not constitutionally severe." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 589 (1998); *compare Coates v. City of Cincinnati*, 402 U.S. 611, 611–14 (1971) (holding prohibition of "annoy[ing]" conduct unconstitutionally vague in the context of a criminal ordinance). And, indeed, Plaintiffs cite no authority to suggest that the alleged potential for arbitrary "enforcement" in the context of grant decisions is constitutionally problematic. Mot. at 23–24. There is no "enforcement," either criminal or civil, when the government makes a funding decision.

B. Plaintiffs Are Unlikely to Prevail on Their APA Claims.

1. Plaintiffs' Claims Are Not Justiciable Under the APA.

a. The Issuance of the March 2025 Guidance Was Not Final Agency Action.

The March 2025 guidance is not reviewable under the APA because it is not a final agency action. The APA generally authorizes judicial review only of final agency actions. 5 U.S.C. § 704. The APA defines final "'agency action' [as] includ[ing] the whole or a part of . . . relief, or the equivalent or denial thereof[.]" *Id.* § 551(13). In turn, "'relief' includes the whole or a part of an agency['s] . . . grant of money[.]" *Id.* § 551(11)(A). "An agency action is final only if it is *both* 'the consummation of the agency's decisionmaking process' *and* a decision by which 'rights or obligations have been determined' or from which 'legal consequences will flow.'" *Nat'l Mining*

Ass'n v. McCarthy, 758 F.3d 243, 250 (D.C. Cir. 2014) (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997)).

Whether a change to an agency's grant application process is a final agency action depends, in part, on whether that change alone is outcome determinative. When the change involves some exercise of agency discretion, until the agency "completes its review and reaches a decision [on the grant award], there has been no final agency action . . . and the matter is not ripe for judicial review." *Citizens Alert Regarding Env't v. EPA*, 102 F. App'x 167, 168 (D.C. Cir. 2004); *see also Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1103–04 (9th Cir. 2007) (holding that there was no "final agency action . . . until the [agency] ha[d] reviewed a grant application and decided to disburse the funds"); *Karst Env't Educ. & Prot., Inc. v. EPA*, 403 F. Supp. 2d 74, 81 (D.D.C. 2005) (holding that there was no final agency action when the agency "ha[d] not yet decided whether to award the grant"), *aff'd* 475 F.3d 1291, 1295 (D.C. Cir. 2007).

Here, the March 2025 guidance expresses an "expect[ation]" that recipients "review and be aware of current Presidential Executive Orders," and instructs recipients to "[p]rovide information on the changes made by the recipient to align the TPP project with Presidential Executive Orders, *if applicable*, including the steps taken to review the project and identify the modifications proposed." ECF No. 8-3 at 4–5 (emphasis added). The March 2025 guidance, moreover, directs that recipients' "work plan should address the expectations outlined in the original NOFO, to the extent aligned with Presidential Executive Orders." *Id.* at 5. Nothing in these statements—nor anything else in the March 2025 guidance—makes Plaintiffs ineligible for a continuation award or limits HHS's discretion regarding continued funding. Indeed, under the terms of the NOFO and the initial Notice of Award issued to all Plaintiffs, Plaintiffs are required to comply with all applicable executive orders. *See* ECF No. 8-2 at 56; Ex. A at 6. And continuation

decisions continue to be judged by the same standards articulated in the NOFO—*i.e.*, "based on availability of funds, satisfactory progress of the project, grants management compliance, including timely reporting, and continued best interests of the government." ECF No. 8-2 at 56. Accordingly, there is no final agency action for Plaintiffs to challenge.

Despite these facts, Plaintiffs blithely assert that the March 2025 guidance document is final agency action (Mot. at 27–28), relying primarily on *Planned Parenthood of New York City, Inc. v. United States Department of Health and Human Services ("PPNYC")*, 337 F. Supp. 3d 308 (S.D.N.Y. 2018). To start, that out-of-Circuit decision is inconsistent with the precedent in this District, discussed above. But in any event, the facts of that case are not analogous. In *PPNYC*, the court concluded that final agency action was present because the challenged requirements in the TPP Program funding announcement itself made the plaintiffs "*not eligible*" to receive funds. *Id.* at 328. Here, there is no such restriction on eligibility, or anything at all that would preclude HHS from awarding continuation funding to any of the Plaintiffs who applied. The requirements are the same; HHS has merely instructed applicants to explain how they intend to comply with their preexisting obligations. *Compare State ex. rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1031–32 (N.D. Cal. 2018) (finding final agency action in the context of grant applications based on the addition of a new requirement to certify compliance with the government's interpretation of a provision of the Immigration and Nationalization Act requiring the sharing of information with federal law enforcement).

Plaintiffs' reliance on *United States Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016), is also misplaced. In that case, the Court addressed a judicial determination that deprived mining companies and affiliated properties of a safe harbor from liability under the Clean Water Act, which carries with it "significant criminal and civil penalties." *Id.* at 600. The Court concluded

that, in light of those consequences, the determination constituted final agency action. *Id*. Plaintiffs here are exposed to no such civil or criminal liability. Rather, Plaintiffs seek continued funding for their projects.

The March 2025 guidance is just that—guidance—for what recipients should include in their request for additional funds. It is neither "the consummation of the agency's decisionmaking process," nor "a decision by which 'rights or obligations have been determined' or from which 'legal consequences will flow.'" *Nat'l Mining Ass'n*, 758 F.3d at 250 (quoting *Bennett*, 520 U.S. at 177–78). And "[t]he question is not whether judicial review will be available but rather whether judicial review is available *now*." *Id*. at 253. As it stands, no continuation funding decisions for the upcoming year have been made, and Plaintiffs therefore cannot identify a final agency action that is subject to the APA.

b. The March 2025 Guidance Is Not Reviewable Because It Reflects Grant-Making Policy Preferences Committed to Agency Discretion by Law.

Plaintiffs are also unlikely to prevail on their APA claim because they fail to demonstrate that there are standards for the Court to apply in reviewing the March 2025 guidance. "[B]efore any review at all may be had, a party must first clear the hurdle of § 701(a)," *Heckler v. Chaney*, 470 U.S. 821, 828 (1985), which precludes review under the APA if the challenged agency action is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The APA presumes agency action is judicially reviewable, but "[t]his is 'just' a presumption." *Lincoln v. Vigil*, 508 U.S. 182, 190-91 (1993) (quoting *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349 (1984)). Under § 701(a)(2), "review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Heckler*, 470 U.S. at 830. "In such a case," the relevant statutory provision "can be taken to have committed the decisionmaking to the agency's judgment absolutely." *Id*. (internal quotation marks omitted).

An agency's allocation of appropriated funds is typically and presumptively committed to agency discretion by law because "the very point" "is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way." *Lincoln*, 508 U.S. at 192; *see Milk Train, Inc. v. Veneman*, 310 F.3d 747, 748–51 (D.C. Cir. 2002); *Los Coyotes Band of Cahuilla & Cupeño Indians v. Jewell*, 729 F.3d 1025, 1038 (9th Cir. 2013); *Serrato v. Clark*, 486 F.3d 560, 568–70 (9th Cir. 2007). This is why agencies' grant-award decisions are presumptively unreviewable. *See Lincoln*, 508 U.S. at 191–92 (including "allocation of funds from a lump-sum appropriation" among the "administrative decision[s] traditionally regarded as committed to agency discretion" that have been held "to be presumptively unreviewable"); *see also Milk Train, Inc.*, 310 F.3d at 750–51 (applying *Lincoln* in the context of non-lump-sum appropriations).

Plaintiffs cannot overcome the presumption that HHS's March 2025 guidance document—which merely reiterates, in different words—recipients' obligations to comply with executive orders, is unreviewable. Congress has provided HHS sparse guidance for how HHS should distribute Tier 1 grants amounting to tens of millions of dollars. Regarding such grants, Congress instructed HHS only "to fund medically accurate and age appropriate programs that . . . replicat[e] programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral factors underlying teenage pregnancy, or other associated risk factors." That language does not limit HHS's discretion when determining whether to continue funding, much less whether the agency may issue guidance documents requiring compliance with Executive Branch policy directives. *See Hosp. for Special Surgery v. Becerra*, Civ. A. No. 22-2928 (JDB), 2023 WL 5448017, at *7 (D.D.C. Aug. 24, 2023) (concluding that statutory language must be directly related to the decision the plaintiff challenges). Indeed, the statute says nothing at all about

whether—once awarded a grant—a particular recipient should receive funding in a subsequent year. And the NOFO itself—which Plaintiffs do not challenge, and, in fact, rely on—states that continuation funding will be awarded on criteria that includes the "continued best interests of the government." ECF No. 8-2 at 56.

Indeed, at least one court in this District has concluded that grant making decisions for TPP projects specifically are presumptively unreviewable. *See Pol'y & Rsch., LLC v. HHS*, 313 F. Supp. 3d 62, 75–76 (D.D.C. 2018). In *Policy & Research*, the court remarked that there was "little doubt that HHS's decision to stop funding for Plaintiffs' projects, and to recompete the funds associated with those projects, is the type of agency action that is presumptively unreviewable." *Id.* at 76. The court concluded, however, that agency regulations governing "termination" applied where the agency "shorten[ed] Plaintiffs' project periods" by denying continuation funding, and therefore—as to the "termination" there were standards for the Court to apply—*i.e.*, the agency's regulation in 45 C.F.R. pt. 75. *See Pol'y & Rsch.*, 313 F. Supp. 3d at 76–78. And, therefore, the court reasoned, the court could consider whether HHS's denial of continuation funding without explanation was arbitrary and capricious under the APA. *Id.* at 76–79, 83.

Here, however, there has been no "termination." It is undisputed that HHS has not made a decision on Plaintiffs' applications for continuation funding. Nothing in HHS's regulations, moreover, cabins the agency's discretion to issue instructions—as HHS did in the March 2025 guidance—to inform the agency's consideration of those applications. It necessarily follows that, even if the March 2025 guidance constituted a final agency action (it does not), the decision to issue mere instructions that applicants for continued funding should review and explain their compliance with executive orders is an unreviewable agency decision.

2. Plaintiffs' APA Claims Fail on the Merits.

Plaintiffs would also be unlikely to prevail on their APA claims if the Court were to reach them. Plaintiffs' APA arguments are based on an unsupported and inaccurate premise—*i.e.*, that the March 2025 guidance requires funding recipients to change their programs in such a way that would not allow recipients to "replicat[e] programs that have been proven effective through rigorous evaluation[.]" 138 Stat. at 671. As Plaintiffs acknowledge, HHS "did not eliminate [ ] existing expectations and requirements for TPP-funded projects . . . *e.g.*, that the projects 'focus on areas of greatest need' and 'replicate to scale evidence-based teen pregnancy prevention programs with fidelity and quality.'" Mot. at 15–16 (quoting March 2025 guidance, ECF No. 8-3 at 7). And again, as Plaintiffs acknowledge—these are the same requirements "set[] forth" in the NOFO, Mot. at 16, and reiterated in the "deep dive into each of the expectations of [the] grant program," Advancing Equity through Replication of EBPs and Services (TPP 23 Tier 1), ECF No. 8-4 (revised March 2025). As much as Plaintiffs contend that the March 2025 guidance fundamentally changed TPP Program requirements, they fail to make that showing. Rather, the March 2025 guidance is a common-sense instruction that applicants should conform their projects to executive orders "if applicable" consistent with their preexisting obligations.

Plaintiffs' arguments also present a false choice between replicating programs that have been proven effective to reduce teenage pregnancy and aligning TPP projects with Executive Branch policy priorities as set forth in executive orders. The March 2025 guidance provides examples of potential changes recipients "may make to align their projects," which include "selecting a different evidence-based program for implementation, making adaptations to existing curriculum, and updating policies, staffing, and training, etc." ECF No. 8-3 at 5. That is hardly a directive to abandon evidence-based programs.

There is also no merit to Plaintiffs' assertions that the March 2025 guidance is an unexplained change in the agency's position, or that Plaintiffs lacked fair notice. *See* Mot. at 35–36. The NOFO that announced TPP Program grants for the operative appropriation required certification of compliance with executive orders governing financial assistance awards, NOFO, ECF No. 8-2 at 63, and the Notice of Award all recipients received in 2023 further required compliance with "all requirements imposed by . . . Executive Orders . . . as applicable," Ex. A at 6. There is therefore no change in position for HHS to explain. To the extent Plaintiffs rely on a purported distinction between "align[ing]" Plaintiffs' projects to conform to relevant executive orders (Mot. at 36), and "comply[ing]" with them (Ex. A at 6), Plaintiffs' argument is based in semantics rather than substance.

C. Plaintiffs Are Unlikely to Prevail on their Ultra Vires Claim.

Ultra vires review is "a doctrine of last resort," *Schroer v. Billington*, 525 F. Supp. 2d 58, 65 (D.D.C. 2007), and the equivalent of "a Hail Mary pass—and in court as in football, the attempt rarely succeeds," *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009). More specifically, ultra vires review of agency action is only available when an agency's error is "patently a misconstruction of [statute;]" "when the agency has disregarded a specific and unambiguous statutory directive[;]" or "when the agency has violated some specific command of a statute." *Griffith v. Fed. Labor Rels. Auth.*, 842 F.2d 487, 493 (D.C. Cir. 1988) (internal citations and quotations omitted). "Garden-variety errors of law or fact are not enough." *Id.*

Providing instructions to grant recipients that they should conform their applications for continued funding to executive orders—particularly when grantees accepted funds in the first place with the understanding that such compliance was required—is hardly the type of fundamental error that justifies ultra vires review. Plaintiffs fail to point to anything "specific and unambiguous" in

Congress's appropriation of funds for the TPP Program that prohibits the March 2025 guidance, because none exists, and therefore Plaintiffs' ultra vires claim fails.

Plaintiffs' ultra vires claim faces another insurmountable hurdle. Both the Supreme Court and D.C. Circuit have made clear that an ultra vires claim is unavailable where an alternative remedial forum exists in which a plaintiff may pursue the challenge. *See Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43 (1991) (non-statutory review is available only when a party would be "wholly deprive[d] . . . of a meaningful and adequate means of vindicating its statutory rights"); *Lepre v. Dep't of Labor*, 275 F.3d 59, 72 (D.C. Cir. 2001) (a "critical" requirement for ultra vires review is "the lack of any alternative means of judicial review for the plaintiffs"); *see also Nyunt*, 589 F.3d at 449.

If Plaintiffs continuation funding is denied, they may pursue relief at that time. The potential for review after a decision on Plaintiffs' applications thus provides a plausible alternate avenue for Plaintiffs to pursue relief, if they are, in fact, denied continuation funding. Plaintiffs are therefore unlikely to prevail on their ultra vires claim.

III. The Balance of Equities and Public Interest Weigh Against Relief.

A party seeking a preliminary injunction must also demonstrate "that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. These two "factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435.

In arguing that the public interest weighs in their favor, Plaintiffs mostly repackage their arguments on alleged irreparable harm and on the merits. For all the reasons described above, Plaintiffs' harm and merits arguments fail. On the other hand, granting Plaintiffs' motion—which includes a broad request that all potential recipients of TPP program continuation funding be permitted to reapply—would upend HHS's ongoing consideration of applications for the

upcoming year. *See Trump v. Wilcox*, --- S. Ct. ---, 2025 WL 1464804, at *1 (May 22, 2025) (granting request for stay of injunction "to avoid [ ] disruptive effects" on government operations). Therefore, the balance of the equities and public interest favor denying Plaintiffs' request for injunctive relief, particularly given that the agency's decisions on Plaintiffs' continuation funding requests are around the corner, and, as described above, HHS will keep the funds Plaintiffs seek available until August 31.

IV. Any Injunctive Relief Should Be Narrowly Tailored.

The Court should deny Plaintiffs' motion for a preliminary injunction. But if the Court were to provide injunctive relief, the injunction should be narrowly tailored. It is a bedrock principle of equity that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *see also Lewis v. Casey*, 518 U.S. 343, 360 (1996) (explaining that an injunction should not provide "a remedy beyond what [is] necessary to provide relief" to the injured parties). In line with these principles, to the extent the Court intends to grant Plaintiffs' request for a preliminary injunction, any preliminary relief should be limited to address any established harms of the present Plaintiffs.

There is no basis for extending relief to non-parties in this suit, as Plaintiffs propose. ECF No. 8-14 (Proposed Order). Accordingly, any preliminary injunction should confirm that all obligations in the injunctive order apply only with respect to any grants involving Plaintiffs specifically. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions *of the parties* until a trial on the merits can be held." (emphasis added)).

V. A Bond Should Accompany Any Injunctive Relief.

If the Court were to grant Plaintiffs' motion, Defendants respectfully request that any injunctive relief be accompanied by a bond under Fed. R. Civ. P. 65(c), which provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." As the D.C. Circuit recently clarified, "injunction bonds are generally required." *Nat'l Treasury Emps. Union v. Trump*, No. 25-5157, 2025 WL 1441563, at *3 n.4 (D.C. Cir. May 16, 2025) (per curiam). The Court has broad discretion to determine the amount of an appropriate bond. If the Court were to enter an injunction, Defendants ask that the bond amount reflect the cost and disruption to HHS's administration of the TPP Program resulting from Plaintiffs' requested relief.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion for a preliminary injunction.

Dated: March 28, 2025

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

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Counsel for Defendants

Exhibit A

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Award

Award# 1 TP1AH000275-01-00

FAIN# [redacted]

Federal Award Date: 06/15/2023

Recipient Information

1. Recipient Name

PLANNED PARENTHOOD CALIFORNIA CENTRAL COAST

518 Garden St

Santa Barbara, CA 93101-1606

2. Congressional District of Recipient

24

3. Payment System Identifier (ID)

[redacted]

4. Employer Identification Number (EIN)

[redacted]

5. Data Universal Numbering System (DUNS)

6. Recipient's Unique Entity Identifier (UEI)

[redacted]

7. Project Director or Principal Investigator

[redacted]

8. Authorized Official

[redacted]

Federal Agency Information

OASH Grants and Acquisitions Management Division

9. Awarding Agency Contact Information

[redacted]

Grants Management Specialist

[redacted]

10.Program Official Contact Information

[redacted]

Public Health Advisor

Division of Program Development and Operation

[redacted]

Federal Award Information

11. Award Number

1 TP1AH000275-01-00

12. Unique Federal Award Identification Number (FAIN)

[redacted]

13. Statutory Authority

Division H, Title II of the Consolidated Appropriations Act, 2023 (Public Law No. 117-328)

14. Federal Award Project Title

Central Coast Comprehensive Sex Education Collaborative (CSEC)

15. Assistance Listing Number

93.297

16. Assistance Listing Program Title

Adolescent Health Programs

17. Award Action Type

New

18. Is the Award R&D?

No

Summary Federal Award Financial Information

19.	**Budget Period Start Date** 07/01/2023 **- End Date** 06/30/2024	
20.	**Total Amount of Federal Funds Obligated by this Action**	$798,640.00
	20a. Direct Cost Amount	$731,790.14
	20b. Indirect Cost Amount	$66,849.86
21.	Authorized Carryover	$0.00
22.	Offset	$0.00
23.	Total Amount of Federal Funds Obligated this budget period	$0.00
24.	**Total Approved Cost Sharing or Matching, where applicable**	$0.00
25.	**Total Federal and Non-Federal Approved this Budget Period**	$798,640.00
26.	**Period of Perfomance Start Date** 07/01/2023 **- End Date** 06/30/2028	
27.	Total Amount of the Federal Award including Approved Cost Sharing or Matching this Period of Performance	$798,640.00

28. Authorized Treatment of Program Income

ADDITIONAL COSTS

29. Grants Management Officer – Signature

[redacted]

OASH Grants Management Officer

30. Remarks

This action provides FY 2023 Tier 1 funds in the amount of $798,640. See attached Terms and Conditions.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Award

Award# 1 TP1AH000275-01-00
FAIN# T[redacted]
Federal Award Date: 06/15/2023

Recipient Information

Recipient Name
PLANNED PARENTHOOD CALIFORNIA
CENTRAL COAST
518 Garden St
Santa Barbara, CA 93101-1606

Congressional District of Recipient
24

Payment Account Number and Type
[redacted]

Employer Identification Number (EIN) Data
[redacted]

Universal Numbering System (DUNS)

Recipient's Unique Entity Identifier (UEI)
[redacted]

31. Assistance Type
Cooperative Agreement

32. Type of Award
Other

33. Approved Budget
(Excludes Direct Assistance)

I. Financial Assistance from the Federal Awarding Agency Only
II. Total project costs including grant funds and all other financial participation

a. Salaries and Wages	$313,203.57
b. Fringe Benefits	$82,685.74
c. Total Personnel Costs	$395,889.31
d. Equipment	$0.00
e. Supplies	$117,827.00
f. Travel	$33,208.07
g. Construction	$0.00
h. Other	$72,303.38
i. Contractual	$112,562.38
j. TOTAL DIRECT COSTS	$731,790.14
k. INDIRECT COSTS	$66,849.86
l. TOTAL APPROVED BUDGET	$798,640.00
m. Federal Share	$798,640.00
n. Non-Federal Share	$0.00

34. Accounting Classification Codes

FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	OBJECT CLASS	CFDA NO.	AMT ACTION FINANCIAL ASSISTANCE	APPROPRIATION
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	$798,640.00	[redacted]

35. Terms And Conditions

SPECIAL CONDITIONS

1. **Medium Risk Designation.** The Office of the Assistant Secretary for Health (OASH) has designated this award MEDIUM RISK. This designation is to protect the federal government's interest. The Grants Management Officer (GMO) will reevaluate this designation after three months. This designation is based on OASH's experience with new organizations starting projects under this program and/or a lack of prior experience managing awards with OASH. This special condition remains in effect until the GMO removes the condition in writing.

   Under a **MEDIUM RISK** designation to assure ongoing programmatic progress, you as the recipient must submit a monthly progress report outlining specific and measurable progress toward meeting the objectives in the approved project work plan. The federal project officer will provide information regarding the content and format of the report, which should not exceed 2 pages. The reporting period is every 30 days from the project start date. The report must be submitted as a Grant Note in GrantSolutions no later than 5 days after the close of the period. For example, for a project beginning July 1, the first reporting period covers July 1 through July 30 and must be submitted no later than August 5. This requirement is in addition to the standard reporting requirement described in the Reporting section below.

   Failure to comply with this Special Condition may result in an administrative action such as disallowance of funds, drawdown restriction, suspension, or termination. Should OASH decide to terminate the award prior to the end of the project period based on a material failure to comply with this conditions of the award, OASH must report the termination to the government-wide integrity and performance system (currently FAPIIS).

SPECIAL TERMS AND REQUIREMENTS

1. **Budget Period and Continuation Awards.** The award is for the budget period noted on line 19 with the possibility of subsequent continuation awards of up to 12 months at a time up to the maximum project period described on line 26. As the recipient, you must submit a separate application for review each budget period. OASH must approve the application in order for you to receive continued support for that year. Continuation application instructions will be provided no later than three months before the end of the current budget period. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as project progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the government.

2. **Addressing Reviewer Comments on Weaknesses.** The recipient must submit as a Grant Note in GrantSolutions a written response to all weaknesses noted in the Review Panel Comments within 30 days of the project start date on this Notice of Award. The response should address the weaknesses in relation to the program expectations as described in the notice of funding opportunity (NOFO). If addressing those weaknesses results in a significant change to the workplan and/or budget, a revised workplan and/or updated budget must be submitted as part of the response. Grants Management Officer prior approval is required for significant changes to become effective.

3. **Submission of MOAs.** The recipient must submit all Memoranda of Agreement (MOAs) for partnerships or collaborations identified in the application within 30 days of the start of the first budget period. MOAs should be on partner letterhead with appropriate signatures of all parties to the agreement and outline specific roles, responsibilities, resources, and contributions to the project of each organization. For new partnerships not identified in the application, the recipient must submit any new MOA as a Grant Note in

GrantSolutions within 10 days of its execution.

4. **Paperwork Reduction Act Applicability.** Any collection of information as defined in **5 C.F.R. 1320.3(c)** may require OMB clearance if it is a requirement of your award to collect that information. The recipient is responsible for preparing the clearance package necessary to obtain Paperwork Reduction Act clearance and submitting it to the project officer. The project officer will notify the recipient when the approval has been received or request additional information.

5. **Institutional Review Board (IRB)**. It is the recipient's responsibility to ensure that any activities meeting the definition of human subjects research are appropriately reviewed according to the Common Rule **(45 CFR Part 46)**. For non-exempt research activities, Institutional Review Board (IRB) approvals must be submitted via Grant Solutions Grant Notes within 5 business days of receipt from the IRB. No activities that require IRB approval may take place prior to the recipient's receipt of the IRB approval.

   The recipient must have clear procedures in place to determine whether the research is exempt under the Common Rule consistent with the guidance provided by the Office of Human Research Protections (OHRP). The determination that an exemption applies should be documented and provided as a Grant Note in GrantSolutions.

6. **Substantial Federal Involvement**. The award is a cooperative agreement. Cooperative agreements are a form of assistance that allows for substantial involvement between the awarding agency and the recipient during the period of performance. In addition to the usual monitoring and technical assistance provided under the cooperative agreement (e.g., assistance from assigned Federal project officer, monthly conference calls, periodic site visits, ongoing review of plans and progress, relevant meetings, provision of training and technical assistance), substantial programmatic involvement will include:
   * Prior approval for change of time that Key Personnel are dedicated to the project and for replacement of Key Personnel. Key Personnel includes any position that is responsible for the day-to-day management and oversight of the project.
   * Consulting with the recipient throughout the preparation and dissemination of materials related to the award.
   * Review of recipient progress during the planning period and approval at significant milestones to move forward with full implementation.
   * Review and approval of EBPs selected for replication, EBP implementation plans, and proposed adaptations to EBPs.
   * Consulting on the adaptations proposed to ensure fidelity to EBPs core components.
   * Assisting the recipient in the review and revision of priorities for activities conducted under the cooperative agreement.
   * Serving as a programmatic resource during the implementation of the project by participating in the design of the activities and contributing with subject matter expertise.
   * Identification of other organizations with whom the recipient may be asked to develop cooperative and collaborative relationships and partnerships to enhance the effectiveness of the project.
   * Reviewing and approving all program materials prior to use in the project to ensure the materials are age appropriate, medically accurate, culturally and linguistically appropriate, trauma-informed, and inclusive.

7. **Non-duplication of efforts**. The recipient must coordinate with all teen pregnancy prevention programs within the same service areas to ensure that services provided under this award will not duplicate services and/or programs that already exist in the focus populations or communities. Within the first 30 days of the project, the recipient must submit documentation as a Grant Note in GrantSolutions outlining the populations, specific settings/locations, and areas of the community in which the project will be implemented and include other organizations implementing teen pregnancy prevention activities. The

recipient should outline a plan or strategy how the organizations will work together to avoid duplication.

8. **Replicate EBPs with fidelity and quality.** Recipients must replicate one or more evidence-based programs (EBPs) that meet the criteria outlined in Section A.2.c.2 - Eligibility of Programs to be Replicated and Implemented to Scale of the Notice of Funding Opportunity (AH-TP1-23-001). Recipients are expected to obtain prior approval from OPA for selected EBPs prior to piloting the programs and work with OPA to finalize the plan for implementing evidence-based programs. The recipient must replicate EBPs with fidelity and quality. The recipient is expected to observe 5% of all EBP sessions and 100% of all EBP facilitators for fidelity and quality on an annual basis. Recipients may not significantly change the program's core components or compromise program fidelity. All proposed adaptations must be reveiwed by OPA. Major adaptations must be approved by OPA prior to implementation, regardless of guidance provided by the program developer.

9. **Materials Review**. The recipient is required to make all materials used and information disseminated within the funded project age appropriate and medically accurate. OPA expects the recipient to make materials and information culturally and linguistically appropriate, trauma-informed, and inclusive of all youth. Review of materials is required prior to use in the grant. OPA expects the recipient to follow its guidance in conducting its own review. The recipient must correct any medical accuracy issues identified as part of its review prior to implementation, notify OPA that all modifications have been made, and certify that materials are medically accurate prior to use in the project. OPA may require recipients to submit program materials to OPA for a medical acc uracy review by OPA.

10. **Evalutaion Activities**. No more than ten percent of requested federal funds may be allocated to the collection and analysis of data related to the project. In addition, recipients may not use funds for a rigorous impact evaluation.

    Recipients are not required to collect such data as it relates to knowledge, attitudes, and intentions on sex.

    The recipient is required, if selected, to participate in any OPA-directed Federal Evaluation, if funding for such an evaluation becomes available and must agree to follow all evaluation protocols established by OPA or its designee.

11. **TPP Program Performance Measures**. Recipients must collect all OPA performance measures (OMB #0990-0438, Expiration August 31, 2023, pending renewal) and report them on a semi-annual basis. Performance measure data are due at the same time the performance project reports (See Reporting Section below). In collecting performance measures and other project data, recipients must adhere to all relevant state laws, organizational policies, and other administrative procedures prior to collection.

12. **Teen Pregnancy Prevention Program Tier 1 Expectations**. The recipient should conduct the project in such a manner as to address the overall program expectations in the notice of funding opportunity AH-TP1-23-001. Specifically, demonstrate by the end of the planning period, the ability to scale replication of evidnce based programs (EBPs) in 3 or more settings in each identified community, including a confirmation of the total number of youth available in each setting and the percentage of them that will receive EBPs;
    * demonstrate readiness to begin fully executing all expectations of the award by the end of the 6-month planning period;
    * focus project on a community(ies) and population(s) that are disproportionally affected by unintended teen pregnancy and STIs;
    * meaningfully engage youth, parents/caregivers, and the community in the design, implementation, and monitoring of the project;
    * actively engage and collaborate with a network of partners in order to increase awareness of, access to,

and utilization of adolescent-friendly services which address the needs of the population of focus;
* execute the project in an equitable, safe, supportive, and inclusive environment using trauma informed and positive youth development approaches; and
* have a Monitoring and Improvement Plan (MIP) to ensure programs offered are equitable, accessible, and of the highest quality and best fit for the community(ies) and population(s).

13. **Grantee Meetings**. The recipient is encouraged to actively participate in all OPA-supported TPP recipient meetings and recipient conferences, in addition to training and technical assistance (TA) available from the Reproductive Health National Training Center and other OPA-funded TA providers. OPA is planning to conduct one TPP grantee training in Year 1 of the project , a national grantee conference in years 2 and 4, and at least one recpient meeting in years 3 and 5.

STANDARD TERMS

1. **Recipient Responsibilities and Compliance with Requirements.** The recipient of this award has the full responsibility for the conduct of the project or activity supported under this award and for adherence to all award terms and conditions, statutory, regulatory, or policy requirements applicable to grants and cooperative agreements. The approved project or activity is described in the application for this award subject to any OASH GMO approved amendments. Approval of the project does not waive or negate any statutory, regulatory, or policy requirements applicable to grants and cooperative agreements.

   Although recipients are encouraged to seek the advice and opinion of the federal project officer and grants management specialist on special problems that may arise, such advice does not diminish the recipient's responsibility for making sound programmatic and administrative judgments and does not imply that the responsibility for operating decisions has shifted to HHS, OASH, or the program office.

   The recipient accepts the terms and conditions of the award by drawing or otherwise obtaining funds for the award from the grant payment system or office. By accepting this award, the recipient agrees to comply with the applicable federal requirements for grants and cooperative agreements, including those in the SAM registration certifications, and to the prudent management of all expenditures and actions affecting the award including the monitoring of subrecipients (if applicable).

   The recipient must comply with all terms, conditions, and requirements outlined in this Notice of Award, including:

   - Award policy terms and conditions contained in the applicable Department of Health and Human Services (HHS) Grant Policy Statement (GPS), (note any references in the GPS to 45 C.F.R. Part 74 or 92 are now replaced by 45 C.F.R. Part 75, and the SF-269 is now the SF-425), and its subsequent updates. The HHS Grants Policy Statement is available at https://www.hhs.gov/grants-contracts/grants/grants-policies-regulations/index.html.
   - All requirements imposed by program statutes and regulations, Executive Orders, and HHS grant administration regulations, as applicable.
   - Requirements or limitations in any applicable appropriations acts.
   - Compliance will all applicable statutes and regulations included in the Certifications and Representations for the recipient's SAM.gov registration.

2. **Grants Management Officer Prior Approval Requirements.** Certain changes to the project or its assigned personnel require prior approval from the Grants Management Officer (GMO) (45 C.F.R. § 75.308).

   The recipient's Authorizing Official (AO) and/or Project Director/Principal Investigator (PD/PI) listed on page 1 of the Notice of Award must sign all amendment requests for actions requiring prior approval. The recipient must submit the request through the GrantSolutions Amendment Module. If the AO has changed since OASH issued the award, the recipient must provide notice of the change in AO. A change in PD/PI requires prior approval by the GMO and must be requested by the AO listed on the Notice of Award.

If approved, the GMO will sign the approval, typically by issuing a new Notice of Award. No other signature will constitute a valid approval. If the recipient acts on the basis of a response from any other officials or individuals, the recipient does so at its own risk. Such responses will not be considered binding by or upon any OASH office or HHS component. The GMO is not obligated to provide retroactive approvals.

Any other correspondence not relating to a prior approval item should be uploaded to Grant Notes within GrantSolutions. All correspondence must include the Federal Award Identification Number (FAIN) and signature of the AO and/or the PD/PI to avoid delays.

3. **Salary Limitation**. The Salary Limitation is based upon the Executive Level II of the Federal Executive Pay Scale. Effective January 2023, the Executive Level II salary is $212,100. This amount is updated annually and posted at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/.

For the purposes of the salary limitation, the direct salary is exclusive of fringe benefits and indirect costs. An individual's direct salary is not constrained by the legislative provision for a limitation of salary. The rate limitation simply limits the amount that may be awarded and charged to the grant or cooperative agreement. A recipient may pay an individual's salary amount in excess of the salary cap with non-federal funds.

4. **Reporting Subawards and Executive Compensation.** As the recipient of this award you must comply with the following statutory reporting requirements.

A. Reporting of first-tier subawards.

1) Applicability.

Unless you are exempt as provided in paragraph D of this award term, you must report each action that obligates $30,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2) Where and when to report.

You must report each obligating action described in paragraph A.1. of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FFRS). For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) What to report.

You must report the information about each obligating action as specified in the submission instructions posted at http://www.fsrs.gov.

B. Reporting Total Compensation of Recipient Executives.

1) Applicability and what to report.

You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a) The total Federal funding authorized to date under this award is $30,000 or more;

b) In the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. §170.320 (and subawards); and

(2) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. §170.320 (and subawards); and

c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the Executive Compensation page of the SEC website.)

2) Where and when to report.

You must report executive total compensation described in paragraph B.1. of this award term:

a) As part of your registration profile in the System for Award Management (SAM).

b) By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives.

1) Applicability and what to report.

Unless you are exempt as provided in paragraph D of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

a) In the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(2) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the Executive Compensation page of the SEC website.)

2) Where and when to report.

You must report subrecipient executive total compensation described in paragraph C.1. of this award term:

a) To the recipient.

b) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

D. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to

report:

1) Subawards, and

2) The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions.

For purposes of this award term:

1) "Entity"

This term means all of the following, as defined in 2 C.F.R. Part 25:

a) A Governmental organization, which is a State, local government, or Indian tribe;

b) A foreign public entity;

c) A domestic or foreign nonprofit organization;

d) A domestic or foreign for-profit organization;

e) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2) "Executive"

This term means officers, managing partners, or any other employees in management positions.

3) "Subaward":

a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ll .210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'').

c) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4) "Subrecipient"

This term means an entity that:

a) Receives a subaward from you (the recipient) under this award; and

b) Is accountable to you for the use of the Federal funds provided by the subaward.

5) "Total compensation"

This term means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

a) Salary and bonus.

b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e) Above-market earnings on deferred compensation which is not tax-qualified.

f) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

5. **Intangible Property and Data Rights.**

A. Data (42 C.F.R. §75.322(d)). The federal government has the right to: 1) Obtain, reproduce, publish, or otherwise use the data produced under this award; and 2) Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

B. Copyright (42 C.F.R. §75.322(b)). The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a federal award. The federal government reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

C. Patents and Inventions (42 C.F.R. §75.322(c)). The recipient is subject to applicable regulations governing patents and inventions, including government- wide regulations issued by the Department of Commerce at 37 CFR part 401.

6. **Acknowledgement of Federal Grant Support**. When issuing statements, press releases, publications, requests for proposal, bid solicitations and other documents --such as tool-kits, resource guides, websites, and presentations (hereafter "statements") — describing the projects or programs funded in whole or in part with U.S. Department of Health and Human Services (HHS) federal funds, the recipient must clearly state:

1) the percentage and dollar amount of the total costs of the program or project funded with federal money; and,

2) the percentage and dollar amount of the total costs of the project or program funded by non-governmental sources.

When issuing statements resulting from activities supported by HHS financial assistance, the recipient entity must include an acknowledgement of federal assistance using one of the following or a similar statement.

If the HHS Grant or Cooperative Agreement is NOT funded with other non-governmental sources:

This [project/publication/program/website, etc.] [is/was] supported by the [full name of the PROGRAM OFFICE] of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling $XX with 100 percent funded by [PROGRAM OFFICE]/OASH/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by [PROGRAM OFFICE]/OASH/HHS, or the U.S. Government. For more information, please visit [PROGRAM OFFICE website, if available].

The HHS Grant or Cooperative Agreement IS partially funded with other nongovernmental sources:

This [project/publication/program/website, etc.] [is/was] supported by the [full name of the PROGRAM OFFICE] of the U.S.

Department of Health and Human Services (HHS) as part of a financial assistance award totaling $XX with XX percentage funded by [PROGRAM OFFICE]/OASH/HHS and $XX amount and XX percentage funded by non-government source(s). The contents are those of the author (s) and do not necessarily represent the official views of, nor an endorsement, by [PROGRAM OFFICE]/OASH/HHS, or the U.S. Government. For more information, please visit [PROGRAM OFFICE website, if available].

The federal award total must reflect total costs (direct and indirect) for all authorized funds (including supplements and carryover) for the total competitive segment up to the time of the public statement.

Any amendments by the recipient to the acknowledgement statement must be approved by the OASH grants management officer after consultation with the federal project officer.

If the recipient plans to issue a press release concerning the outcome of activities supported by this financial assistance, it should notify the OASH federal project officer and the OASH grants management officer in advance with sufficient time to allow for coordination.

7. **Whistleblower Protections.** The recipient is hereby given notice that the 48 C.F.R. § 3.908 (related to the enhancement of contractor employee whistleblower protections), implementing 41 U.S.C. § 4712, as amended (entitled "Enhancement of contractor protection from reprisal for disclosure of certain information") applies to this award.

8. **Reporting of Matters Related to Recipient Integrity and Performance.** As the recipient, you are responsible for:

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

2) Reached its final disposition during the most recent five-year period; and

3) If one of the following:

a) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty,

reimbursement, restitution, or damages of $5,000 or more;

c) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

d) Any other criminal, civil, or administrative proceeding if:

(1) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(2) It had a different disposition arrived at by consent or compromise with an acknowledgement of fault on your part; and

(3) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to this requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

2) Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

3) Total value of currently active grants, cooperative agreements, and procurement contracts includes—

a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

F. Disclosure Requirements.

Consistent with 45 C.F.R. § 75.113, applicants and recipients must disclose, in a timely manner, in writing to the HHS Awarding Agency, with a copy to the HHS Office of the Inspector General, all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity) and the HHS Office of the Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

HHS OASH Grants and Acquisitions Management
1101 Wootton Parkway, Plaza Level
Rockville, MD 20852

AND

US Department of Health and Human Services Office of Inspector General
ATTN: OIG HOTLINE OPERATIONS—MANDATORY GRANT DISCLOSURES
PO Box 23489
Washington, DC 20026

URL: http://oig.hhs.gov/fraud/report-fraud/index.asp

(Include "Mandatory Grant Disclosures" in subject line)

Fax: 1-800-223-8164 (Include "Mandatory Grant Disclosures" in subject line)

Failure to make required disclosures can result in any of the remedies described in 45 C.F.R. § 75.371 ("Remedies for noncompliance"), including suspension or debarment (See also 2 C.F.R. Parts 180 & 376 and 31 U.S.C. § 3321).

The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award.

9. **Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.** As the recipient, You will administer your project in compliance with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. You will comply with applicable laws that prohibit discrimination on the basis of sex, which includes discrimination on the basis of gender identity, sexual orientation, and pregnancy. Compliance with these laws require taking reasonable steps to provide meaningful access to persons with limited English proficiency and providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights

provides guidance on complying with civil rights laws enforced by HHS. See https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html and https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html

For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficient individuals, see https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-englishproficiency/fact-sheet-guidance/index.html and https://www.lep.gov.

For information on your specific legal obligations for serving qualified individuals withdisabilities, including providing program

access, reasonable modifications, and to provide effective communication, see http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html.

HHS funded health and education programs must be administered in an environment free of sexual harassment, see https://www.hhs.gov/civil-rights/for-individuals/sexdiscrimination/index.html.

For guidance on administering your project in compliance with applicable federal religious nondiscrimination laws and applicable federal conscience protection and associated antidiscrimination laws, see https://www.hhs.gov/conscience/conscience-protections/index.html and https://www.hhs.gov/conscience/religious-freedom/index.html.

10. **Trafficking in Persons.** This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104)

A. Provisions applicable to a recipient that is a private entity.

1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

b) Procure a commercial sex act during the period of time that the award is in effect; or

c) Use forced labor in the performance of the award or subawards under the award.

2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

a) Is determined to have violated a prohibition in paragraph A.1 of this award term; or

b) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph A.1 of this award term through conduct that is either-

(1) Associated with performance under this award; or

(2) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 376.

B. Provision applicable to a recipient other than a private entity.

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-

1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either

a) Associated with performance under this award; or

b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 376.

C. Provisions applicable to any recipient.

1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph A.1 of this award term

2) Our right to terminate unilaterally that is described in paragraph A.2 or B of this section:

a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

b) Is in addition to all other remedies for noncompliance that are available to us under this award.

3) You must include the requirements of paragraph A.1 of this award term in any subaward you make to a private entity.

D. Definitions. For purposes of this award term:

1) "Employee" means either:

a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

b) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2) "Forced labor" means:

Labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3) "Private entity":

a) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

b) Includes:

(1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal

organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(2) A for-profit organization.

4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion"

These terms have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102)

11. **Prohibition on certain telecommunications and video surveillance services or equipment.** As the recipient you are responsible for the following.

A. As described in CFR 200.216, recipients and subrecipients are prohibited to obligate or spend grant funds (to include direct and indirect expenditures as well as cost share and program) to:

1) Procure or obtain,

2) Extend or renew a contract to procure or obtain; or

3) Enter into contract (or extend or renew contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Pub. L. 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b) Telecommunications or video surveillance services provided by such entities or using such equipment.

c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise, connected to the government of a covered foreign country.

REPORTING REQUIREMENTS

1. **Financial Reporting Requirement—Federal Financial Report (FFR) SF 425.** As a recipient, you must submit your SF-425 to OASH using the Department of Health and Human Services (HHS) Payment Management System (PMS). Failure to submit the FFR in the correct system by the due date may delay processing of any pending requests or applications. Submission of your SF-425 will enhance the reconciliation of expenditures and disbursements and allow for timely closeout of grants. To assist in your preparation for submission you may find the SF-425 and instructions for completing the form on the Web at: http://apply07.grants.gov/apply/forms/sample/SF425-V1.0.pdf. You must complete **all** sections of the FFR.

A. Quarterly FFR Due Date.

Your FFR is due 30 days after the end of each Quarter in the federal fiscal year. That is for the:

Quarter ending September 30, your FFR is due October 30

Quarter ending December 31, your FFR is due January 30

Quarter ending March 30, your FFR is due April 30

Quarter ending June 30, your FFR is due July 30.

B. Final FFR Due Date. Your final FFR covering the entire project is due 120 days after the end date for your project period.

C. Past due FFRs. If you have not submitted by the due date, you will receive a message indicating the report is **Past Due**. Please ensure your PMS account and contact information are up to date so you receive notifications.

D. Electronic Submission.

Electronic Submissions are accepted only via the PMS – No other submission methods will be accepted without prior written approval from the GMO. You must be assigned to the award with authorized access to the FFR reporting Module when submitting. If you encounter any difficulties, contact the PMS Help Desk or your assigned Grants Management Specialist. Please reference box/line 9 pf page 1 of this NoA for the name of your assigned Grants Management Specialist.

2. **Semiannual Progress Report Requirements.** You must submit semiannual progress reports 30 days after the end of each performance reporting period unless otherwise required under Special Terms and Requirements or Special Conditions as required by statute, regulation, or specific circumstances warranting additional monitoring for this award. Your progress reports must address content required by 45 CFR § 75.342(b)(2). Additional guidance may be provided by the Program Office. Reports must be submitted electronically via the Performance Project Report (PPR) Module in GrantSolutions.

3. **Audit Requirements.** The Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) combined the audit requirements for all entities under one Act. An audit is required for all non-Federal entities expending Federal funds, and must be consistent with the standards set out at 45 CFR Part 75, Subpart F ("Audit Requirements"). The audits are due within 30 days of receipt from the auditor or within 9 months of the end of the fiscal year, whichever occurs first. The audit report when completed should be submitted online to the Federal Audit Clearinghouse athttps://harvester.census.gov/facides/Account/Login.aspx.

4. **Closeout Requirements.** Once the project period has ended, as the recipient, you are required to submit a Final Program Progress report, the SF-425 using the Department of Health and Human Services (HHS) Payment Management System and the SF-428 Tangible Personal Property report and/or Disposition report **within 120 calendar days after the project and final budget period end date**. Failure to submit these required reports when due may result in the imposition of a special award condition or the withholding of support for other active or future projects or activities involving your organization.

A. The Final Program Progress Report:

Your report must address content required by 45 CFR § 75.342(b)(2). Additional guidance on content of the progress report may be provided by the Program Office. Submit your report via the Performance Project Report Module in GrantSolutions.

B. SF-425 Final Federal Financial Report:

Submit your Final FFR using the Department of Health and Human Services (HHS) Payment Management System. SF-425 submissions through Grant Solutions will no longer be accepted for OASH awards. Electronic Submissions are accepted only via the HHS Payment Management System – No other submission methods will be accepted without prior written approval from the GMO. You must be assigned to the grant with authorized access to the FFR reporting Module when submitting. If you encounter any difficulties, contact the HHS Payment Management System Help Desk or your assigned Grants Management Specialist. Please reference the CONTACTS section of NoA Terms and Conditions to locate the name of your assigned Grants Management Specialist.

C. SF-428 and SF-428-B Tangible Personal Property report and/or Disposition reports:

Submit reports via attachment to the Grant Notes section within GrantSolutions. You may find the forms SF 428 on the Web at: https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1

Additional instructions for completing all reports will be provided in the Pre-closeout letter from the Grants & Acquisitions Management Division.

CONTACTS

1. **Fraud, Waste, and Abuse.** The HHS Inspector General accepts tips and complaints from all sources about potential fraud, waste, abuse, and mismanagement in Department of Health and Human Services' programs. Your information will be reviewed promptly by a professional staff member. Due to the high volume of information that they receive, they are unable to reply to submissions. You may reach the OIG through various channels.

   Internet: https://forms.oig.hhs.gov/hotlineoperations/index.aspx

   Phone: 1-800-HHS-TIPS (1-800-447-8477)

   Mail: US Department of Health and Human Services
   Office of Inspector General
   ATTN: OIG HOTLINE OPERATIONS
   PO Box 23489
   Washington, DC 20026

   For additional information visit https://oig.hhs.gov/fraud/report-fraud/index.asp.

2. **Payment Procedures.** Payments for grants awarded by OASH Program Offices are made through the Payment Management System (PMS, previously known as the Division of Payment Management) https://pms.psc.gov/home.html.

   PMS is administered by the Program Support Center (PSC), HHS. Contact PMS to establish an account if you do not have one.

   Inquiries regarding payments should be directed to https://pms.psc.gov/home.html; or

   Payment Management Services
   P.O. Box 6021

Rockville, MD 20852

or 1-877-614-5533

3. **Use of Grant Solutions.** GrantSolutions is our web-based system that will be used to manage your grant throughout its life cycle. Please contact GrantSolutions User Support to establish an account if you do not have one. Your Grants Management Specialist has the ability to create a GrantSolutions account for the Grantee Authorized Official and Program Director/Principal Investigator roles only. Financial Officer accounts may only be established by GrantSolutions staff. All account requests must be signed by the prospective user and their supervisor or other authorized organization official.

   For assistance on GrantSolutions issues please contact: GrantSolutions User Support at 202-401-5282 or 866-577-0771, email help@grantsolutions.gov, Monday – Friday, 8 a.m. – 6 p.m. ET. Frequently Asked Questions and answers are available at https://grantsolutions.secure.force.com/.

4. **Grants Administration Assistance.** For assistance on **grants administration** issues please contact the Grants Management Specialist listed in Box 9 on page 1 of this Notice of Award or mail:

   OASH Grants and Acquisitions Management Division
   Department of Health and Human Services
   Office of the Secretary
   Office of the Assistant Secretary for Health
   1101 Wootton Parkway, Rockville, MD 20852

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD OF GREATER NEW YORK, *ET AL.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ET AL.*, Defendants.	Civil Action No. 1:25-cv-1334-TJK

DECLARATION OF AMY MARGOLIS

I, Amy Margolis, declare as follows:

1. I am the Deputy Director of the Office of Population Affairs where I oversee the day-to-day operations of the Office. This includes supervising the Office's senior leadership team; managing an annual budget of close to $400 million; administering several large grant programs to deliver quality family planning services, replicate and evaluate teen pregnancy prevention programs, and implement embryo adoption awareness programs; and oversee contracts for data collection, technical assistance, and communications activities. I have served in that capacity since March 2023. My duties in this role include oversight over the Teen Pregnancy Prevention Program ("TPP Program").
2. Processing continuation funding for TPP grantees takes a minimum of four weeks and all funds must be awarded by the close of the fiscal year, September 30, 2025.
3. The amount of continuation funding possible for each plaintiff based on their previous year's grant award is as follows: $1,091,185 for Planned Parenthood of Greater New York; $487,013 for Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana and Kentucky; $773,619 for Planned Parenthood of the Heartland, Inc.; $798,636 for Planned

Parenthood California Central Coast; and $985,867 for Planned Parenthood Mar Monte. As continuation award amounts are approximately known for plaintiffs in this case, the Department will hold $4,136,320 in funds for obligation until August 31 or the Department makes a determination to fund them, whichever is earlier. When awards are made they may be backdated to the beginning of the budget period (July 1).

4. Notwithstanding any issues related to compliance with the March 2025 guidance provided by the Office of Population Affairs, which is the subject of this lawsuit, plaintiffs may not be funded or may receive reduced funding due to performance issues. At least one plaintiff grantee, Planned Parenthood Mar Monte has been flagged for poor performance after serving less than 5% of total number of youth it planned to reach on an annual basis in its original grant application.

5. Of the 55 grantees who received funding from the 2024 appropriation, 54 submitted an application for continuation funding by the April 15, 2025 deadline. Planned Parenthood Mar Monte was the only grantee that did not apply for continuation of funding.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing declaration as is true and correct to the best of my knowledge, information, and belief.

Executed on May28, 2025, in Washington, D.C.

Amy Margolis
Deputy Director, Office of Population Affairs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD OF GREATER NEW YORK, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Case No. 1:25-cv-01334-TJK

[PROPOSED] ORDER

Having considered Plaintiffs' motion for a preliminary injunction, ECF No. 8, Defendants' opposition, and the entire record contained herein, IT IS HEREBY ORDERED:

Plaintiffs' motion is DENIED.

SO ORDERED.

Dated: _____

_____
Hon. Thomas J. Kelley
United States District Judge