

**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-02453-BAH

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

For the second time since May, Plaintiffs—a group of Planned Parenthood entities who seek continuing funding to operate research projects as part of the Teen Pregnancy Prevention Program (“TPP Program”)—have come to this Court seeking emergency relief to prevent the U.S. Department of Health and Human Services (“HHS”) from taking any further steps to implement changes to the program mandated by new Executive Branch policy and Supreme Court case law. On this occasion, Plaintiffs seek a temporary restraining order (“TRO”) against an interpretive notice letter that they have been aware of for nearly a month. Plaintiffs’ initial effort to forestall HHS’s changes to the TPP Program by seeking emergency injunctive relief were rebuffed by this Court. *Planned Parenthood of Greater New York v. U.S. Dep’t of Health & Human Servs.*, No 1:25-cv-01334, 2025 WL 1768100 (D.D.C. June 26, 2025) (“*PPGNY I*”) (Kelly, J.).¹ Subsequently, Plaintiffs were issued notices of award for their continuation funding. Plaintiffs’ instant motion asserts Defendants are trying to impose the same harms at issue in that case through a notice letter that accompanied their notices of award, albeit nearly a month after they received the notice of award, and three weeks after Plaintiffs voluntarily dismissed *PPGNY I*. Like their last attempt to seek emergency relief, this renewed motion likewise fails to meet the demanding standards necessary for enjoining HHS from implementing its guidance prior to a hearing on the merits. That is so for at least five reasons.

First, there is no irreparable harm. Only one of the named plaintiffs, Planned Parenthood of Greater New York (“PPGNY”), asserts that it needs relief on or before July 31 such that a

¹ Plaintiffs should have designated this case as related to *PPGNY I* when they filed their complaint, as it “involv[es] the same parties” and “relat[es] to the same subject matter” as *PPGNY I*. D.D.C. L.R. 40(a)(4), (b)(2). Defendants have filed a notice of related case in this matter and in *PPGNY I*. Notice of Related Case, ECF No. 7.

temporary restraining order (as opposed to a motion for a preliminary injunction) is required. That need supposedly emanates from a policy notice letter that HHS published on or about July 2, the same day Plaintiffs learned their continuing grant applications had been granted, and was incorporated into the notice of awards Plaintiffs received on July 8. But PPGNY (along with its co-plaintiffs) dismissed its then-pending lawsuit over the threatened termination of its TPP Program grants on July 11—after Judge Kelly entered an expedited summary judgment schedule for resolving Plaintiffs’ claims on the merits. And PPGNY has put forward no evidence that it has taken any steps, through the judicial process or otherwise, between July 8 and yesterday afternoon to try to address the allegedly irreconcilable conflict between its programs and HHS’s new policy notice. This lengthy, and self-imposed, delay belies the need for the Court to exercise its equitable powers in this extraordinary fashion.

Second, Plaintiffs do not have a cause of action to challenge HHS’s activities to date under the Administrative Procedure Act (“APA”), which they recognize as a predicate to their merits claims. Until Plaintiffs actually submit their programs for review to the Office of the Assistant Secretary of Health (“OASH”), HHS has no way to discern what programs are compliant. It has not consummated its decision-making process with respect to any particular program materials, nor has it taken any actions from which legal rights and obligations flow. Plaintiffs previously filed their continuing grant applications under protest due to changing award guidance that they believed was unlawful, and fail to explain why they could not take similar steps here when drawing down funds. And even if Plaintiffs were right on this score, the Court lacks jurisdiction because the manner in which the agency exercises its discretion to decide which program materials comply with the terms and conditions of the grants is committed to agency discretion by law under 5 U.S.C. § 701(a)(2) and *Lincoln v. Vigil*, 508 U.S. 182 (1993).

Third, Plaintiffs cannot establish a likelihood of success on their constitutional and statutory theories. 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 Plaintiffs are only being asked to submit materials so Defendants can assess how Plaintiffs intend to comply with OASH's new policy guidance, and what corrective steps, if any, will be necessary on the part of Plaintiffs. Furthermore, HHS has not acted contrary to the TPP Program appropriation in insisting that all funded programs comport with the statute's terms and pertinent executive orders, and has reasonably explained its bases for actions at all steps of the process to date.

Fourth, Plaintiffs' ultra vires claim also cannot justify a TRO. 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.

Fifth, and finally, as to the balance of the equities, the injunctive relief that Plaintiffs seek would upend HHS's administration of the TPP Program. Any harm that Plaintiffs suffer as a result of a TRO being denied will be the result of their own decision to wait until the eleventh hour to file a new lawsuit and seek emergency relief, when their claims could have been addressed in their earlier suit on the expedited summary judgment briefing schedule Judge Kelly set.

For these reasons, the Court should deny the motion.

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* TRO Mot. Ex. 1, ECF No. 3-2. 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, e.g.,* Sample Notice of Award for PPCCC at 5–6 (Ex. A).

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. Jan. Guidance for Non-Compete Awards (Ex. B). 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”). Ex. 2, ECF No. 1-2. The March 2025 guidance largely mirrored 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, *Protecting 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.

III. Plaintiffs’ Funding Applications and the First Litigation

Plaintiffs are three 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 of the Heartland, Inc. (PPH); and

Planned Parenthood California Central Coast (PPCCC). All three Plaintiffs, including the two seeking emergency relief here, filed continuing applications by the applicable deadline. TRO Mot. 5. The applications made no secret of Plaintiffs' dissatisfaction with Defendants' notice regarding program requirements in the March 2025 guidance. For instance, PPGNY only made "minor edits to the Program Narrative, Work Plan, Logic Model, Needs Assessment, and Budget Narrative language to note site types, site names, and site locations and on April 15, 2025, PPGNY uploaded its non-competing continuation award application for year three of the current grant cycle and included language indicating that it was making such modifications under protest as to the new EO 'alignment' requirement, and without certifying compliance with the new EO 'alignment' requirement." Stark Decl. ¶ 28, ECF No. 3-6; *see also* Tosh Decl. ¶ 39, ECF No. 3-7 (describing PPCCC's application, which was filed "under protest").

After applying, Plaintiffs took their concerns to this Court, filing a complaint on May 1, 2025, along with a motion for a preliminary injunction. The case was assigned to Judge Kelly. He denied the preliminary injunction motion on the basis of a lack of irreparable harm on June 26, 2025. As relevant here, he held that "Plaintiffs identify no imminent deadline after which, assuming HHS grants their applications, the Court will be unable to grant them relief by ordering that their TPP projects be restored to their pre-[March 2025 guidance] forms." *PPGNY I*, 2025 WL 1768100, at *6.

Plaintiffs received notice that their applications were granted on July 2, 2025. Stark Decl. ¶ 29; Tosh Decl. ¶ 40. Attached to the emails providing this notice was a "policy notice" intended to "clarify OASH policy for Teen Pregnancy Prevention Program (TPP Program) grant recipients." Off. of the Ass't Sec'y of Health, U.S. Dep't of Health & Human Servs., *OASH Teen Pregnancy Prevention Program Policy Notice 1* (July 1, 2025) ECF No. 3-4)("OASH Notice"). Plaintiffs

received their Notice of Award on July 8. Stark Decl. ¶ 30; Tosh Decl. ¶ 41. Plaintiffs also met with HHS officials on July 8 who provided them with a document stating “Project Officer (PO) will continue to work with the grantee to support them in meeting the expectations of this grant under the priorities of the current administration while remaining within scope of the project. If a change in scope is needed, the grantee will work with the PO and Grants Management.” Stark Decl. ¶ 31; *see also* Tosh Decl. ¶ 42 (similar message delivered in “workplan assessment” PPCCC received on July 8). On the same day, Judge Kelly set an expedited briefing schedule that would have resulted in full summary judgment briefing of Plaintiffs’ claims by August 21, 2025. Despite the issuance of the OASH Notice in conjunction with the acceptance of the awards and the existing briefing schedule, *PPGNY I*, No. 1:25-cv-1334 (D.D.C.), Minute Order of July 8, 2025, Plaintiffs voluntarily dismissed their lawsuit before Judge Kelly on July 11, 2025, *id.*, ECF No. 34.

Plaintiffs cast the OASH Notice as a “mandate” that is “impos[ing] new and substantive conditions on continued funding,” even though the grants, by their terms, have long required compliance with relevant executive orders by grantees, and the March guidance alerted Plaintiffs to these policy developments several months ago. TRO Opp. 5–6. PPGNY claims that it must decide by July 31 as to whether it can proceed with the program due to its “limited financial resources by which it can continue to operate” its program and pay staff “without guarantee of reimbursement from TPP funding.” Stark Decl. ¶ 44. Although the origin of this purported requirement is not clearly spelled out by Plaintiffs, PPGNY appears to assert that it needs to draw down further funding by July 31 to remain solvent, but that drawing down the funds will require acceptance of the terms of the Notice of Award, including the new OASH Notice. *Id.* ¶ 39. PPGNY also says that it has until the “end of July” (that is, Thursday) to submit “a revised workplan with modified objectives” and the curriculum to its program to HHS although it does not state where this

purported requirement came from. *Id.* ¶ 32. By contrast, PPCCC was told by its project officer to “resubmit its implementation plan by August 15, 2025,” and that it would need to “certify[] that it was compliant with all Executive Orders issued by the Trump Administration” and the OASH Notice. Tosh Decl. ¶ 44.

IV. This Litigation

Plaintiffs filed their complaint in this action on July 29, 2025. ECF No. 1. The complaint contains the same four claims Plaintiffs advanced in *PPGNY I*, plus one additional claim. In Count I, Plaintiffs allege, through the APA, that the OASH Notice violates Plaintiffs’ purported rights under the Due Process Clause. *Id.* ¶¶ 129–45. In Count II, Plaintiffs allege a violation of the First Amendment, a theory they did not advance in *PPGNY I* and do not advance in their TRO motion. *Id.* ¶¶ 145–53. In Counts III and IV, 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.* ¶¶ 154–77. And in Count V, Plaintiffs claim that HHS’s issuance of the OASH Notice alongside the notices of award was *ultra vires*. *Id.* ¶¶ 178–85.

Plaintiffs moved for a TRO on the same day. They have asked the Court to (1) “enjoin enforcement of the [OASH Notice] pending the conclusion of these proceedings”; (2) “permit TRO Plaintiffs to continue to operate their programs and draw down funds for Year 3 under their previously approved Non-Competing Continuation (NCC) applications, so long as they remain in compliance with the agency’s Materials Review Guidance dated January 2025”; and (3) to order Defendants “not to pause, freeze, impede, block, cancel, or terminate any awards pursuant to the Teen Pregnancy Prevention Program to which TRO Plaintiffs are awardees”; and (4) that any injunction “preserve Plaintiffs’ status and rights with respect to funds claimed or received while the Court’s order is in effect, and any claims for funding or reimbursement submitted by Plaintiffs

during the duration of the order shall be deemed lawful and valid under their respective grant agreements, even if the order is subsequently vacated, modified, or reversed.” ECF No. 3, at 1–2.

STANDARD OF REVIEW

A temporary restraining order, like a preliminary injunction, is extraordinary relief granted only to preserve the status quo. *See Nat’l Council of Nonprofits v. Off. Of Mgmt. & Budget*, No. 1:25-cv-239, 2025 WL 314433, at *2 (D.D.C. Jan. 28, 2025). It is “an extraordinary and drastic remedy” and “never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citation omitted). As such, it may “only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). To obtain such extraordinary relief, a plaintiff “must show (1) ‘he is likely to succeed on the merits,’ (2) ‘he is likely to suffer irreparable harm in the absence of preliminary relief,’ (3) ‘the balance of equities tips in his favor,’ and (4) issuing ‘an injunction is in the public interest.’” *Hanson v. District of Columbia*, 120 F.4th 223, 231 (D.C. Cir. 2024) (quoting *Winter*, 555 U.S. at 20); *see also Chef Time 1520 LLC v. Small Bus. Admin.*, 646 F. Supp. 3d 101, 109 (D.D.C. 2022) (“The decision of whether to award a TRO is analyzed using the same factors applicable to preliminary injunctive relief[.]” (cleaned up)). When “the Government is the opposing party,” the assessment of “harm to the opposing party” and “the public interest” merge. *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 (per curiam))). A motion for TRO 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))). That standard has not been met here.

Plaintiffs have requested that the Court enter temporary relief by July 31 to prevent an imminent injury to them. But only two of the three plaintiffs, PPGNY and PPCCC, have actually come forward in this motion to seek temporary relief. And as between those entities, only PPGNY asserts a need for the Court to act by tomorrow. PPCCC is under a deadline to submit an implementation plan by August 15, 2025, but that deadline alone would not require issuance of a TRO before a preliminary injunction motion could be briefed and deliberated. And close scrutiny of PPGNY’s assertions of irreparable harm belies the notion that it has met the high standard necessary for entry of an emergency injunction to resolve its dilemma.

The sole evidence of PPGNY’s harm is the declaration of Ms. Stark, who states that “PPGNY is forced to choose between (1) continuing the previously approved program at risk of investigation and termination of funding for violating the terms of the Notice of Award, (2) out of abundance of caution, substantially modify its program and incorporate changes that run contrary to PPGNY’s mission, make the program less effective, and even then still risk being accused of being non-compliant due to the risk of arbitrary and discriminatory enforcement of the Program Mandate, or (3) ending its TPP funded education programming entirely.” Stark Decl. ¶ 43. But this alleged dilemma is not of sufficient gravity to justify the Court’s intervention. PPGNY asserts a

“risk” of future investigation and future termination of funding if it draws down funds as intended upon issuance of a continuation award, but that “risk” cannot be conflated with the sort of imminent harm requiring a TRO. PPGNY has not submitted its program materials to HHS, and HHS has not given PPGNY a deadline for doing so (as it has for PPCCC). HHS has not therefore had a chance to assess PPGNY’s materials and determine whether corrective action should be taken, and if so, what form that action would assume.

The lack of imminence of this “risk” is borne out by Plaintiffs’ second assignation of harm, which posits that PPGNY could choose “out of an abundance of caution” to “modify its program” in such a way that it satisfies the OASH Notice; but just as “risks” of enforcement do not rise to the level of imminent injury, neither do changes made out of an “abundance of caution” rather than necessity. PPGNY asserts it has “until the end of July” to make these changes, *id.* ¶ 32, but this appears to be a self-imposed deadline based on PPGNY’s internal constraints, not a deadline HHS imposed. *Compare id. with* Tosh Decl. ¶ 44 (“PPCCC was told by its PO to resubmit its implementation plan by August 15, 2025.”). A decision by PPGNY to cancelling its TPP program altogether would not transform either of these non-imminent concerns into irreparable injury.

Two further considerations militate against a finding of irreparable harm. The first is that Plaintiffs’ course of dealing before, and during, *PPGNY I* does not square with the assertion that a temporary restraining order is needed. As explained, even though Plaintiffs were vehemently in disagreement with the new direction taken by the March TPP notice, Plaintiffs (including PPGNY) nonetheless filed applications under protest, and were awarded grants, but is impossible to maintain now that they have completed the application process and issued a notice of award reflecting the terms of the NOFO in which they participated. Plaintiffs argue now that “[a]lthough HHS granted Plaintiffs’ NCC applications notwithstanding their refusal to certify compliance with

the Executive Order ‘alignment’ requirements, the Program Mandate’s effect is to *reimpose that same unlawful requirement* (and more) via a new agency action, under the threat of more expansive enforcement mechanisms.” TRO Mot. 5 (emphasis added). Assuming, *arguendo*, that this is in fact what HHS did, then it makes no sense why Plaintiffs (1) chose to dismiss their already pending lawsuit before Judge Kelly on July 11 after their noncompete applications were accepted, rather than (2) renew their preliminary injunction motion on the basis that HHS had, while appearing to accept their continuing application, attached such conditions to it that the application was not accepted at all (or alternatively, briefed that issue in the context of the expedited summary judgment schedule Judge Kelly had already set).

The second relevant consideration is Plaintiffs’ timing. Although timing, on its own, is not a basis for denying a motion for a preliminary injunction under this Circuit’s law, it can “bolster[]” the conclusion that such a motion should be denied. *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (concluding district court’s denial of a temporary restraining order was “bolstered” by the plaintiff’s delay in seeking one). That is “because such delay implies a lack of urgency and irreparable harm.” *Newdow v. Bush*, 355 F. Supp. 2d 265, 292 (D.D.C. 2005). Here, Plaintiffs have been aware of the OASH Notice since at least July 2 and their Notices of Award (which, in tying acceptance of conditions to drawdown of funds, are not unusual and track the requirements of previous NOAs) since July 8. But Ms. Stark’s declaration fails to explain what PPGNY was doing between July 8 (when it met with the TPP Program project office) and the filing of this motion, and why it decided to seek emergency relief just two days before its apparently self-imposed July 31 deadline to submit material to OASH, when the legal theory has clearly been available to PPGNY since it received

the notices of award and the OASH Notice. These developments underscore that a preliminary injunction should not issue here due to lack of irreparable harm.

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

A. Plaintiffs Are Unlikely to Prevail on Their APA Claims

1. Plaintiffs' Claims Are Not Justiciable Under the APA

Plaintiffs purport to bring all of their substantive claims, including their constitutional due process claim, their contrary to law claim, and their arbitrary-and-capricious claim, through the APA. TRO Opp. 8 (invoking 5 U.S.C. § 706(2)(B) with respect to their due process claims). At this time, the APA does not give rise to a cause of action to challenge HHS's conduct. HHS has not yet taken final agency action. And the field of grantmaking is one that classically involves choices committed to agency discretion as a matter of law.

a. The Issuance of the OASH Notice Was Not Final Agency Action.

The OASH Notice 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. “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 steps taken by an agency in administering a grant are final agency action depends, in part, on whether those steps have legal consequences for the grantee, or if further steps are

required to actualize the change. Even if an agency’s guidance poses a practical problem for a grantee, that does not mean a reviewable, final agency action is at stake. *Air Brake Sys., Inc. v. Mineta*, 357 F.3d 632, 645 (6th Cir. 2004) (collecting cases); *see also Air Cal. v. U.S. Dep’t of Transp.*, 654 F.2d 616, 621–22 (9th Cir. 1981) (holding that a legal interpretation contained in a letter from the general counsel of the FAA to a local airport was non-final, despite serious indirect effects on plaintiff’s business).

The OASH Notice firmly fits within this category of non-final agency actions in anticipation of final decisions. Like the March update to the NOFO that preceded Plaintiffs’ initial lawsuit, the OASH Notice is intended to “further clarify [the] *expectations* for TPP grantees.” OASH Notice 2. Nothing in the OASH Notice—nor anything in the OASH Notice—makes Plaintiffs ineligible for continued funding or limits HHS’s discretion regarding continued funding. HHS has requested a submission of materials from PPCCC by mid-August, but has otherwise not taken definitive steps; the agency appears not to have even come this far with PPGNY yet. Under the terms of the NOFO and the initial Notice of Award issued to all Plaintiffs, Plaintiffs are already required to comply with all applicable executive orders. *See* NOFO 61; Sample Notice of Award, Ex. A, at 6. Accordingly, there is no final agency action for Plaintiffs to challenge.

Despite these facts, Plaintiffs assert the OASH Notice is final agency action, TRO Mot. 16, relying primarily on *Planned Parenthood of New York City, Inc. v. United States Department of Health & 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, as Plaintiffs were deemed eligible to receive funding, despite their “under protest” applications. HHS is merely providing guidance to grantees to help them with their preexisting obligations under their grants.

The OASH Notice is intended to assist grantees in conforming their programs to valid changes in policy expressed through executive orders and a recent Supreme Court decision, as contemplated by the grant instruments themselves. 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 decision has been made to sanction Plaintiffs for the content of their programs, and Plaintiffs therefore cannot identify a final agency action that is subject to the APA.

b. The OASH Notice Is Not Reviewable Because It Reflects 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 OASH Notice. “[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); *Alan Guttmacher Inst. v. McPherson*, 597 F. Supp. 1530, 1536 (S.D.N.Y. 1984) (although statute might give court authority to weed out “a project [that] was particularly inappropriate for funding,” judicial review unavailable when statute does not “give courts any guidance in sorting among the many projects consistent with the goals stated”), *aff’d*, 805 F.2d 888 (2d Cir. 1986). 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 the OASH Notice—which merely restates 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.” OASH Notice 2. 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 orders. *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, at least one court in this District has concluded that grant administration decisions for TPP Program 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 recompute 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 was arbitrary and capricious under the APA. *Id.* at 76–79, 83.

Here, however, there has been no “termination.” Indeed, despite applying under protest, Plaintiffs received their continuation awards, and HHS has not taking any action to correct any failure to comply with recent executive orders or Supreme Court precedent. Nothing in HHS’s regulations, moreover, cabins the agency’s discretion to issue instructions to inform the agency’s consideration of whether grantees are complying with program requirements. It necessarily follows that, even if the OASH Notice constituted a final agency action (it does not), the decision to issue guidance for grantees on compliance with program requirements is an unreviewable

agency decision.

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

Plaintiffs challenge the OASH Notice under the Due Process Clause, arguing that it is void for vagueness. TRO Mot. 8–16. Plaintiffs’ claim fails at both a threshold level and on the merits.

a. 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 due process 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 continued TPP Program funding.” TRO Mot. 9. 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 Am. Pub. Health Ass’n v. NIH*, --- F. Supp. 3d ----, 2025 WL 1548611, at *13 (D. Mass. May 30, 2025) (distinguishing *NEA v. U.S. Dep’t of Educ.*, --- F. Supp. 3d ----, 2025 WL 1188160 (D.N.H. Apr. 24, 2025) and recognizing “that vagueness standards are relaxed in the government funding context”); *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 briefly address this concern, arguing that their right to receive continuation TPP Program funding is analogous to the loss of benefits at issue in *Roth*. TRO Mot. 9. But none of the cases where analogies to other types of lost benefits were deemed sufficient to bring a due process clause claim were “‘ordinary’ or ‘routine’ government contracts” or grants, like the ones at issue here. *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). 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.

b. 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. They raise two primary concerns with the OASH Notice, but neither has merit.

First, Plaintiffs assert that the OASH Notice is vague as to what it means to “align” with executive orders. TRO Mot. 10–11. But this argument is semantic in nature, not substantive. The term “align” is hardly obscure. In this context, it is meant in the ordinary sense of the term: grantees should “come into precise adjustment or correct relative position” with policies set forth in executive orders. Merriam-Webster, *Align*, <https://www.merriam-webster.com/dictionary/align> (last accessed July 30, 2025). Nor is this use of the term novel in the context of these grants. The NOFO frequently uses the terms “align” or “alignment” to describe the responsibilities of grantees. *See, e.g.*, NOFO 8, 10, 24–28, 36, 43. Vagueness concerns are also ameliorated by the design of the TPP Program itself, which contemplates review and consultation on project adaptations. *Id.* at 17.

In truth, the OASH Notice is not vague or ambiguous. It states—consistent with the NOFO, the March 2025 guidance, and the Notice of Award—that applicants are expected to be aware of recent policy developments contained in executive orders and to “revise their projects to align with executive orders that are currently in force as necessary in order to receive continuation funding.” OASH Notice 1. That is consistent with, and no more vague than, the previous requirements—unchallenged by Plaintiffs—to engage in all sorts of “alignment” in preparing their applications, and with the term of previous awards 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 OASH Notice is unconstitutional because it contains a number of “content mandates that lack clear standards and thereby invite arbitrary and discriminatory enforcement.” TRO Mot. 12–16. As Plaintiffs’ framing of this argument confirms, HHS has yet to take any enforcement steps, and the Court cannot entertain this claim because Plaintiffs have not challenged a final agency action. Even so, this claim 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); *Am. Pub. Health Ass’n*, 2025 WL 1548611, at *13. 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. 23–24. There is no “enforcement,” either criminal or civil, when the government makes a funding decision.

3. Plaintiffs’ “Contrary to Law” Claim Fails

Plaintiffs are also unlikely to prevail on their contrary to law claim. They advance two primary theories on this score, which the Court should reject.

First, Plaintiffs assert that the OASH Notice contravenes the TPP Program appropriation for so-called “Tier 1” grants, because changes to program design run against the requirement that such grants replicate other programs. TRO Mot. 16–18. Again, this argument is difficult to assess because HHS has not been presented with Plaintiffs’ plans and cannot determine if changes needed to satisfy the terms of the grant instrument are in fact inconsistent with statutory requirements. But if the Court reaches this claim it should reject it. The OASH Notice does not repudiate Congress’s instructions; on the contrary, it reaffirms them. OASH Notice 3. “Replication” does not mean Tier I programs have to be identical to the study being replicated. For example, the NOFO explains that “[a]daptations” to programs are, in fact, permitted, in order to “improve fit and relevancy of the program to the community and population of focus.”² NOFO 9. Plaintiffs’ arguments also present

² The Court should give no weight at all to the declaration of Dr. Kantor, ECF No. 3-5, an academic and former senior executive for the Planned Parenthood Federation of America. Dr. Kantor has no basis to opine on the meaning of statutory language. *S.E.C. v. Capital Consultants*,

a false choice between replicating programs that have been proven effective to reduce teenage pregnancy and aligning TPP programs with Executive Branch policy priorities as set forth in executive orders. For example, 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.” Ex. B at 5. That is hardly a directive to abandon Congress’s statutory instructions to fund replication studies.

Second, Plaintiffs allege that the OASH Notice is inconsistent with other requirements of the TPP Program appropriation, such as requirements that programs be “medically accurate” and “effective.” TRO Mot. 18–20. Leave aside, for a moment, how a Court could determine whether such requirements have been met before a final agency action has been taken with respect to a particular program, or how it ought to give meaning to these terms in the context of a federal grantmaking program when Congress has provided no guideposts for how courts should interpret those terms. As before, the OASH Notice does not repudiate either of these requirements for Tier 1 TPP Program grants. Moreover, nothing in the NOFO that preceded the current Tier 1 funding cycle precludes the sorts of programs that Plaintiffs deem to be “ineffective in changing adolescent sexual behavior,” TRO Mot. 18, and by its terms, the NOFO views teenage abstinence as a reasonable and laudable goal. NOFO 12 (“Many adolescents believe it is easier to postpone sexual activity and avoid unintended pregnancy if they can have open and honest conversations about these topics with their parents.”).

LLC, 397 F.3d 733, 749 (9th Cir. 2005) (“Experts may interpret and analyze factual evidence but may not testify about the law.”). And APA cases are not decided on the basis of outside expert opinions, but on the record before the agency when it chose to act; they are not “a forum for the experts to debate the merits of” a particular policy. *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 981, 991-93 (9th Cir. 2014).

4. Plaintiffs' Arbitrary and Capricious Claim Fails

There is also no merit to Plaintiffs' assertions that the OASH Notice is an unexplained change in the agency's position, or that Plaintiffs lacked fair notice. *See* TRO Mot. 20–29. “[R]eview under [the arbitrary and capricious] standard is deferential,” requiring a “court simply [to] ensure[] that the agency has acted within a zone of reasonableness and ... reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). As an initial matter, the NOFO that announced TPP program grants for the operative appropriation itself required certification of compliance with executive orders governing financial assistance awards, NOFO 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. The OASH Notice is of a piece with these documents, and attempts to provide further, helpful guidance to grantees about how to adjust their programs in light of changing policy mandates. There is therefore no change in position for HHS to explain. To the extent HHS's decision-making is viewed this way, it has clearly articulated a reasoned basis for proceeding in the way that it did. Plaintiffs' five arbitrary and capricious theories do not fare well when considered in more detail, either.

First, Plaintiffs fault HHS for relying on factors that Congress did not intend HHS to consider by taking into account “political concerns” instead of “program effectiveness.” TRO Mot. 20–22. The factors that Congress *did* intend to have HHS rely upon are the ones in the statute itself, and HHS is not disregarding those factors. Plaintiffs provide no reliable rubric for how the Court would sort out claims that particular research agendas are “ideological” instead of “evidence based,” particularly in a field that is as politically charged as sex education, which is why courts typically refrain from reviewing such choices under the APA.

Second, Plaintiffs argue HHS didn't consider that the OASH Notice could be read so as to preclude providing any information about sexuality at all, because such materials might be "sexually explicit" or "normalize" sexual activity. TRO Mot. 22–23. This assumes, without foundation, that there is no space between "obscene, indecent, or sexually explicit content" and medically accurate sex education materials that are appropriate for classroom discussion. Similarly, the OASH notice reasonably explains that, particularly in light of new guidance received in executive orders, "healthy equity" and "inclusivity" should not be applied in such a way as to "exceed the statutory scope of the TPP Program." OASH Notice 5.

Third, Plaintiffs assert HHS did not consider "reliance interests" in recasting the program. TRO Mot. 23–24. Not so. The OASH Notice clarifies that HHS is "aware that curricula and other materials . . . were previously approved by OASH." OASH Notice 5–6. But having considered such interests, HHS was entitled to "conclude that reliance interests in [policies] that it views as unlawful are entitled to no or diminished weight." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 32 (2020).

Fourth, Plaintiffs aver that HHS's explanations run counter to evidence that present programming has proven effective in reducing teen pregnancy rates, and to "widely available scientific evidence" that rejects HHS's views about biological sex. TRO Mot. 25–26. To be clear, at this early stage, OASH has stated it "may re-evaluate the effectiveness of programs consistent with the statutory text and this PPN," but it has not had occasion to do so yet. OASH Notice 6. But Plaintiffs are not the ones who make these judgments in APA review. Rather, such decisions are "squarely within the agency's expertise" and courts have "no business second-guessing the agency's decision to fund one program over another." *Healthy Teen Network v. Azar*, 322 F. Supp. 3d 647, 659 & 660 n.17 (D. Md. 2018).

Finally, Plaintiffs argue that HHS has not shown a “good cause for changing policy.” TRO Mot. 26–29. Again, HHS has not changed policy here, as TPP Program grants have always been awarded subject to Executive Branch policy in the form of executive orders. To the extent it does not simply reiterate other arguments, this theory reduces down to the dissatisfaction of Plaintiffs with Defendants’ clearly articulated reasons for issuing the OASH Notice and requiring program alignment with recent executive orders and Supreme Court precedent.

As explained above, there is no need for the Court to reach Plaintiffs’ arbitrary and capricious claims on a TRO briefing schedule, before any harm is visited on Plaintiffs and before any final agency action has been taken, in an area committed to agency discretion by law. As explained above, if the Court does reach the issue, it should find Defendants are likely to succeed on the merits.

B. 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 programs to executive orders—particularly when grantees applied for and 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 OASH Notice, 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’ funding is terminated for failure to comply with grant conditions, they may pursue relief at that time. The potential for review after a decision to terminate funding thus provides a plausible alternate avenue for Plaintiffs to pursue relief, if they are, in fact, denied 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 temporary restraining order 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 would upend the anticipated process for HHS to review program materials. *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 has not made any decision to termination Plaintiffs’ funding. It also would not be equitable to reward Plaintiffs for their decision to voluntarily dismiss *PPGNY I*, where they could have made and briefed the claims at issue here on the expedited summary judgment briefing schedule entered by Judge Kelly, and to instead wait nearly a month to file a new case and seek a TRO two days before purporting to need relief.

IV. Any Injunctive Relief Should Be Narrowly Tailored and Permit Lawful Agency Action

The Court should deny Plaintiffs’ motion for a temporary restraining order. But if the Court were to provide such relief, it 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, that the relief be limited to PPGNY.

There is no basis for extending relief to non-parties in this suit, as Plaintiffs propose. ECF No. 3, at 1–2. 8, or to Plaintiffs that have not justified emergency relief. Accordingly, any TRO should confirm that all obligations in the injunctive order apply only with respect to any grants involving PPGNY specifically. *Trump v. CASA, Inc.*, 606 U.S. ---, 2025 WL 1773631, at *4 (2025).

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 temporary restraining order.

Dated: July 30, 2025

Respectfully submitted,

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Assistant Attorney General
Civil Division

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

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EXHIBIT A



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]
[REDACTED]
[REDACTED]

8. Authorized Official

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Federal Agency Information

OASH Grants and Acquisitions Management Division

9. Awarding Agency Contact Information

[REDACTED]
Grants Management Specialist

[REDACTED]
[REDACTED]

10. Program Official Contact Information

[REDACTED]
Public Health Advisor
Division of Program Development and Operation

[REDACTED]
[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 Performance 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

Notice of Award

Office of the Secretary

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]



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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



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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



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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 reviewed 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 accuracy review by OPA.
10. **Evaluation 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 evidence 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 disproportionately 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,



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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 recipient 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 with 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.



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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.fhrs.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—



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(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



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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. II .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)):



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- 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.



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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,



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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—



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- 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 with disabilities, including providing program



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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



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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



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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.



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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 at <https://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:



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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*



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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

OFFICE OF POPULATION AFFAIRS

GUIDANCE FOR PREPARING A NON-COMPETING CONTINUATION AWARD APPLICATION

***Teen Pregnancy Prevention (TPP) Program Recipients
(AH-TP1-23-001)***



**Applications Due:
April 15, 2025, 6:00 PM Eastern Time**

Updated January 2025

Office of Population Affairs

GUIDANCE FOR PREPARING A NON-COMPETING CONTINUATION AWARD APPLICATION –
TEEN PREGNANCY PREVENTION RECIPIENTS (TPP23 COHORTS)

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PART ONE: GENERAL INSTRUCTIONS

Applicability

These instructions are applicable to Office of Population Affairs (OPA) Teen Pregnancy Prevention (TPP) Program recipients in the TPP23 grant cohort and provide guidance on the preparation and submission of your non-competing continuation (NCC) award application.

Purpose

Recipients are required to submit a non-competing continuation application, which serves as the recipient's official request to OPA for continued funding for the upcoming budget year.

The OPA *Guidance for Preparing a Non-Competing Continuation Award Application* prescribes the content, information, and requirements for the OPA NCC award application. This guidance should be used in conjunction with the Notice of Funding Opportunity (NOFO) under which the competing award was initially funded. The NOFO provides information and guidance for recipients for the entire project period.

Ensure the application is complete, accurate, and responsive to this guidance prior to submission. Detailed information on your progress in accomplishing goals and objectives, TPP performance measure data, and any other progress reporting should **not** be included in the NCC award application. This information should be included in your next progress report.

NCC award applications will be reviewed by the Office of the Assistant Secretary for Health (OASH), including the OPA Project Officer (PO) and the Grants and Acquisitions (GAM) Division Grants Management Specialist (GMS). The PO and GMS will review NCC award applications to ensure the following:

- NOFO expectations are being met;
- Budget and budget narrative is detailed, reasonable, adequate, cost efficient, and clearly aligned with the proposed work plan; and
- Compliance with grant terms and conditions.

The Grants Management Officer (GMO) will issue a notice of award (NoA) if funding has been approved for another budget period. The GMO or PO may contact individual recipients to address concerns or clarify in the NCC award application. Your application and any resulting award may be delayed pending adequate clarification. Your PO will also complete a technical review of your NCC award application to which you will have 30 days upon notification to provide a response to any items noted in the review. More instructions on this process will be provided upon receipt of the NoA.

Note that HHS awards are currently subject to 45 C.F.R. part 75, with the exception of a limited number of provisions in 2 C.F.R. part 200 became effective October 1, 2024, as noted in the [Interim Final Rule](#) describing the HHS bifurcated approach to transitioning to 2 C.F.R. part 200. The remaining provisions will become effective October 1, 2025 with HHS-specific material to be codified at 2 C.F.R. part 300. Furthermore, the HHS Grants Policy Statement (GPS) has been updated effective October 1, 2024.

Provisions effective October 1, 2024	
2 CFR part 200 citation	Replaces 45 CFR part 75 citation
2 CFR § 200.1. Definitions, " <i>Modified Total Direct Cost</i> "	45 CFR § 75.2. Definitions, " <i>Modified Total Direct Cost</i> "
2 CFR § 200.1. Definitions, " <i>Equipment</i> "	45 CFR § 75.2. Definitions, " <i>Equipment</i> "
2 CFR § 200.1. Definitions, " <i>Supplies</i> "	45 CFR § 75.2. Definitions, " <i>Supplies</i> "
2 CFR § 200.313(e). Equipment, <i>Disposition</i>	45 CFR § 75.320(e). Equipment, <i>Disposition</i>
2 CFR § 200.314(a). Supplies	45 CFR § 75.321(a). Supplies
2 CFR § 200.320. Procurement methods	45 CFR § 75.329. Procurement procedures
2 CFR § 200.333. Fixed amount subawards	45 CFR § 75.353. Fixed amount subawards
2 CFR § 200.344. Closeout	45 CFR § 75.381. Closeout
2 CFR § 200.414(f). Indirect costs, <i>De Minimis Rate</i>	45 CFR § 75.414(f). Indirect (F&A) costs, (f)
2 CFR § 200.501. Audit requirements	45 CFR § 75.501. Audit requirements

Citations below have been updated to reflect the effective changes.

PART TWO: APPLICATION CONTENT

The NCC award application should only include:

- I. Required OASH forms,
- II. Brief project narrative and work plan for the upcoming budget year,
- III. Detailed budget and a budget narrative for the upcoming budget year, and
- IV. Appendices (as applicable)

I. REQUIRED FORMS

Below is the list of required forms that recipients must submit within this section of the NCC application. All forms can be found in the NCC applications kit at [GrantSolutions.gov](https://www.grantsolutions.gov).

- SF-424 – Application for Federal Assistance
- SF-424A – Budget Information Non-Construction Program
- SF-424B, Assurances Non-Construction Program
- SF-LLL – Disclosure of Lobbying Activities

II. PROJECT NARRATIVE AND WORK PLAN FOR THE UPCOMING BUDGET YEAR

Project Narrative

Within the project narrative, recipients should include a summary of their most recent community needs and resource assessment. The summary should include a brief description of the assessment process, major findings (e.g., identified needs and resources available), and brief paragraph about how the information has been used to guide the development of the work plan. The PO will use this information to assess your work plan and the extent to which your plan clearly demonstrates that efforts are focused on addressing the needs and leveraging the resources within your community(ies). Please see NOFO

expectation *Focus on Areas of Greatest Need and Facing Significant Disparities* for more information on what is expected from a community assessment.

The project narrative should also include a *very brief* summary of any proposed changes to the project work plan from the previous budget year. Recipients should consult with their PO and GMS to discuss any substantial changes (e.g., change in geographic location, change in population of focus, bringing on or parting ways with major partners, etc.). Changes in scope from the currently approved project should be clearly highlighted and justified in your application. See [HHS Grants Policy Statement](#) for explanation of change of scope.

Work Plan

The main component of this section is the work plan for the upcoming budget year. The work plan should address all the expectations outlined in the original NOFO. To ensure that recipient work plans are aligned with NOFO expectations, OPA has developed a consolidated list of expectations based on the information included in the NOFO (see Table 1 below). The work plan should include long-term goals that span the life of the project, as well as the objectives and activities that will be completed during the upcoming budget period to assist in achieving the long-term goals. The work plan should also clearly demonstrate that the needs identified in the most recent needs assessment are being addressed.

Goal(s)

A goal is a broad statement that describes the purpose of your project and the expected long-term impact you hope to achieve as a result of your project. OPA recommends focusing on 1-2 goals for your project.

Objectives

An objective is a statement describing the results to be achieved and the manner in which these results will be achieved. All objectives should be SMART (specific, measurable, achievable, realistic, and timely).

For each objective:

- Provide a rationale for the objective that includes the corresponding NOFO expectation(s) the objective is aligned with (see Table 1 for a consolidated list);
- List the activities that will be implemented to accomplish the objective;
- Provide a specific timeline, including specific dates, for accomplishing each activity;
- Identify the person/agency responsible for completing each activity; and
- Identify how you will assess the achievement of the activity.

While recipients may have as many objectives as necessary to accomplish the long-term goal(s) of the project, they should carefully review and streamline their work plan objectives. For example, recipients should carefully review objectives to identify any that may be duplicative or may be combined, any that would be better listed as activities under another objective; and any that are no longer necessary.

In addition, while not all objectives may be aligned with specific OPA expectations, OPA expects that each expectation will be aligned with at least one work plan objective. Please note that if the work plan does not already include an objective and corresponding activities for one or more of the OPA

expectations, OPA expects that you will create a new objective with corresponding activities for that expectation.

Activities

For each objective, the work plan should include the activities that are most critical to accomplishing the objective in the upcoming budget period. OPA asks that recipients focus activities on those that are most critical and refrain from including activities that may be important but are less critical to report to OPA (e.g., reviewing newsletters from national organizations, attending information sharing meetings).

Table 1 – Overall OPA Expectations for TPP23 Grantees

TPP23 Tier 1 Expectations*	
1.	Project Management
2.	Focus on Areas of Greatest Need and Facing Significant Disparities
3.	Ensure Equitable, Safe, Supportive, and Inclusive Environments
4.	Replicate to Scale Evidence-Based Teen Pregnancy Prevention Programs with Fidelity and Quality
5.	Adolescent Friendly Supportive Services
6.	Materials Review
7.	Meaningful Youth Engagement
8.	Parent/Caregiver Engagement
9.	Overall Community Engagement
10.	Monitor and Improve
<i>*See TPP23 Tier 1 Expectations for a detailed description of each expectation.</i>	

III. BUDGET and BUDGET NARRATIVE GUIDANCE

A complete budget package consists of the required standard form “Budget Information Non-Construction” (SF-424A) and a budget narrative with detailed justification. You should include supporting documentation for your budget (e.g., a copy of your approved indirect cost rate) as part of the budget package, not as part of your appendices.

1. Standard Form SF-424A

You must enter the project budget according to the directions provided with this standard form.

You must provide an object class category budget for the next budget period (typically 12 months) of the proposed project using Section B, box 6 of SF-424A.

"Federal resources" refers only to the funds for which you are applying under this NCC application.

"Non-federal resources" are all other resources (federal and non-federal).

Do not include costs beyond the next budget period in the object class budget in box 6 of SF-424A or box 18 of SF-424; the amounts entered in these sections should only reflect the budget period covered by this application.

2. Budget Narrative and Justification

The budget narrative must include a detailed line-item budget that includes calculations for all costs and activities by the "object class categories" identified on SF-424A and a justification for the costs. The object class budget organizes your proposed costs into a set of defined categories.

Your budget narrative should justify the overall cost of the project as well as the proposed cost per activity, service delivered, and/or product. For example, the budget narrative should define the amount of work you have planned and expect to perform, what it will cost, and an explanation of how the result is cost effective. If you are proposing to provide services to clients, you should describe how many clients you expect to serve, the unit cost of serving each client, and how this is cost effective.

Proposed costs must adhere to the cost principles described in 45 C.F.R. [§§75.400-75.477](#). We have provided additional information on the most common cost categories for applications for OASH awards below.

Project budget calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient to verify the calculations. Carefully review the NOFO (Section D.7 Funding Restrictions) for specific information regarding allowable, unallowable, and restricted costs.

For each proposed cost for the requested budget period, provide a budget justification, which includes explanatory text and line-item detail. The budget narrative should describe how you derived the categorical costs. Discuss the necessity and reasonableness of the proposed costs you propose.

For categories or items that differ significantly from the previous budget period, provide a detailed justification explaining these changes. Funding for all approved budget periods after the first is generally the same as the initial award amount subject to offset with funds unused in the previous budget period.

Preparing the Budget Narrative

Use the guidelines below for preparing the detailed object class budget. We recommend you present budget amounts and computations in a columnar format: first column, object class categories; second column, federal funds requested; third column, non-federal resources; and last column, total budget.

Sample Budget Table

Object Class	Federal Funds Requested	Non-federal Resources	Total Budget
Personnel	\$100,000	\$25,000	\$125,000

Describing Federal and Non-federal Share

Both federal and non-federal resources (if applicable) must be detailed and justified in the budget narrative. "Federal resources" refers only to the HHS/OASH funds for which you are applying under this NOFO. "Non-federal resources" are all other non-HHS/OASH federal and non-federal resources.

If matching or cost sharing is required or offered voluntarily, you must include a detailed listing of any funding sources identified in box 18 of SF-424 (Application for Federal Assistance).

Selecting an Indirect Cost Method

You must state the method you are selecting for your indirect cost rate. See Indirect Costs below for further information.

If you are providing in-kind contributions of any type or value, including costs otherwise covered by your indirect cost rate, you must identify those costs, and you should, as appropriate, include the value of the in-kind contribution as proposed cost-sharing (voluntary or required) (45 C.F.R. § 75.306).

If you are using a negotiated indirect cost rate, you should submit your negotiated agreement with your budget narrative. We may require a copy of your agreement prior to making any award to you.

Subrecipient/contract and consultant activities must be described in sufficient detail to describe accurately the project activities that each will conduct.

All subrecipient/contract and consultant detailed costs should be included in their respective line items and not broken out in the overall project object class line items. For example, subrecipient/contract travel should be included in the Contractual line item not in Travel. See Section H.3 for more information.

A. OBJECT CLASS DESCRIPTIONS AND REQUIRED JUSTIFICATION

Personnel

Description

Costs of employee salaries and wages, excluding benefits.

Does NOT include consultants, subrecipient personnel costs, personnel costs outside of your organization. 45 C.F.R. § 75.459.

Justification

Clearly identify the PD/PI. Provide a separate table for personnel costs detailing for each proposed staff person: the title; full name (if known at time of application), time commitment to the project as a percentage or full-time equivalent; annual salary and/or annual wage rate; federally funded award salary; non-federal award salary, if applicable; and total salary.

No salary rate may exceed the statutory limitation in effect at the time you submit your application. As of January 2023, the Executive Level II salary is \$212,100. This amount is typically updated each January. This amount reflects an individual's base salary exclusive of

fringe benefits and any income that an individual working on the award project may be permitted to earn outside of the duties to the applicant organization.

Sample Personnel Table

Position Title and Full Name	Percent Time	Annual Salary	Federally-funded Salary	Non-federal Salary	Total Project Salary
Project Director, John K. Doe	50%	\$100,000	\$50,000	\$0	\$50,000
Data Assistant, Susan R. Smith	10%	\$30,000		\$3,000	\$3,000

Fringe Benefits

Description

Costs of personnel fringe benefits, unless treated as part of an approved indirect cost rate.

Justification

Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, Federal Insurance Contributions Act (FICA) taxes, retirement insurance, and taxes.

Travel

Description

Costs of travel by staff of the applicant organization only.

Does NOT include travel costs for subrecipients or contractors under this object class.

Justification

For each trip proposed for your organization employees only, show the date of the proposed travel, total number of traveler(s); travel destination; duration of trip; per diem; mileage allowances, if privately owned vehicles will be used; and other transportation costs and subsistence allowances.

Equipment

Description

Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices. See 45 C.F.R. § 75.2 for additional information.

Justification

For each type of equipment requested you must provide a description of the equipment; the cost per unit; the number of units; the total cost; and a plan for use of the equipment in the project; as well as a plan for the use, and/or disposal of, the equipment after the project ends.

If your organization uses its own definition for equipment you should include in the budget narrative a copy of the policy, or section of your policy, that includes the equipment definition. Reference the policy in your justification. Do not include this policy in your appendices.

Supplies

Description

Costs of all tangible personal property other than those included under the Equipment category. This includes office and other consumable supplies with a per-unit cost of less than \$5,000.

Justification

Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description

Costs of all contracts or subawards for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc.

Include third-party evaluation contracts, if applicable, and contracts or subawards with subrecipient organizations (with budget detail), including delegate agencies and specific project(s) and/or businesses to be financed by the applicant.

This line item is not for individual consultants.

Justification

Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open, and free competition. Recipients and subrecipients are required to use 45 C.F.R. § 75.329 procedures and must justify any anticipated procurement action that is expected to be awarded without competition and exceeds the simplified acquisition threshold fixed by 41 U.S.C. § 134 and currently set at \$250,000. In some cases, HHS/OASH may require recipients make pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., available.

Transferring a substantive part of the project effort to another entity (including non-employee individuals) requires a detailed budget and budget narrative for each subrecipient/contractor, by title/name, along with the same supporting information referred to in these instructions. If you plan to select the subrecipients/contractors post-award and a detailed budget is not available at the time of application, you must provide information on the nature of the work to be transferred, the estimated costs, and the process for selecting the subrecipient/contractor.

Other

Description

Such costs, where applicable and appropriate, may include but are not limited to: consultants; insurance; professional services (including audit charges); space and equipment rent; printing and publication; training, such as tuition and stipends; participant support costs including incentives, staff development costs; and any other costs not addressed elsewhere in the budget.

Justification

Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Costs

Description

This category has one of two methods that you may select. You may only select one and must clearly identify that selection in your submitted budget.

Negotiated Indirect Cost Rate

Your organization currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant federal agency. You should enclose a copy of the current approved rate agreement in your Budget Narrative file.

If you request a rate that is less than allowed, your authorized representative must submit a signed acknowledgement that the organization is accepting a lower rate than allowed.

De minimis Rate

Per 45 C.F.R. § 75.414(f) Indirect (F&A) costs, “any non-Federal entity [i.e., applicant] that has never received a negotiated indirect cost rate, ... may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.”

The de minimis rate method only applies if you have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. If you are waiting for approval of an indirect cost rate, you may request the 10% de minimis rate. If you choose this method, costs included in the indirect cost pool must not be charged as direct costs to the award.

Indirect costs on Federal awards for training are limited to a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of \$25,000 (45 C.F.R. § 75.414 (c)(1)(i)).

Justification

Provide the calculation for your indirect costs total, i.e., show each line item included in the base, the total of these lines, and the application of the indirect rate. If you have multiple approved rates, indicate which rate as described in your approved agreement is being applied and why that rate is being used. For example, if you have both on-campus and off-campus rates, identify which is being used and why.

Program Income

Description

Program income means gross income earned by your organization that is directly generated by e awarded project except as provided in 45 C.F.R. § 75.307(f). Program income includes but is not limited to income from fees for services performed or the use or rental of real or personal property acquired under the award.

Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 45 C.F.R. § 75.307 and 35 U.S.C. §§ 200-212 (applies to inventions made under Federal awards).

Justification

Describe and estimate the sources and amounts of program income that this project may generate. All program income generated as a result of awarded funds must be used within the scope of the approved project-related activities.

Any program income earned must be used under the addition/additive method unless otherwise specified in Section C.2. These funds should not be added to your budget, unless you are using the funds as cost sharing or matching, if applicable. This amount should be reflected in box 7 of the SF-424A.

Non-Federal Resources (Cost Share or Match)

Description

Amounts of non-federal resources that will be used to support the project as identified in box 18 of the SF-424. For all federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the criteria listed in 45 C.F.R. § 75.306.

For awards that require matching by statute, you will be held accountable for projected commitments of non-federal resources in your application budgets and budget justifications by budget period even if the justification exceeds the amount required.

For awards resulting from an application where you voluntarily propose cost sharing, we will include this voluntary cost sharing in the approved project budget and you will be held accountable for it as shown in the Notice of Award (NOA).

Failure to meet a cost sharing or matching obligation that is part of the approved project budget on the NOA may result in the disallowance of federal funds.

If you are funded, you must report cost sharing or matching funds on your quarterly Federal Financial Reports.

Justification

You must provide detailed budget information in your budget narrative (not your appendices) for every funding source identified in box 18. "Estimated Funding (\$)" on the SF-424.

You must fully identify and document the specific costs or contributions you propose as part of your required or voluntary cost sharing requirement. You must provide documentation in your application on the sources of funding or contribution(s).

For in-kind contributions, you must include how the stated valuation was determined. Matching or cost sharing must be documented by budget period.

Unrecovered indirect costs may be included as part of your cost sharing or matching only with prior approval of the grants management officer. Your budget narrative must clearly state that it is your intent to include unrecovered indirect costs as part of your cost sharing or matching. You should include in your budget narrative a copy of your negotiated cost

rate to support the justification. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under your approved negotiated indirect cost rate. (See 45 C.F.R. § 75.306(c)).

If your application does not include the required supporting documentation for cost-sharing or matching, review of the application and any award that may result may be delayed.

B. ESTIMATED UNOBLIGATED BALANCE

You must provide an estimated unobligated balance as of June 30, 2025, separate from your proposed budget at the amount provided by in this guidance. The reported unobligated balance should not include any unliquidated expense associated with the current budget period. The reported estimated unobligated balance remaining at the end of the current budget period may be used as carryover or offset by the federal government. An offset is the use of the unobligated funds to fund a future budget period partially or fully. It is best practice to explain why an unobligated balance exists.

If you do not provide an estimated unobligated balance with your application, we may calculate an estimate based on your cash drawdown history for the award.

If you are requesting the carryover of an unobligated balance along with your continuation budget, you must:

- Explain the reason the unobligated balance exists, including any activities that were not completed during the budget period.
- Indicate how you will separately use the unobligated funds to complete activities necessary for project completion.
- Provide a separate and revised budget and budget narrative for these funds; and
- Indicate the impact on the project if the funds are used to offset funding rather than add to funding.

The detailed budget and budget narrative should be uploaded in the Budget Narrative section of the application kit in GrantSolutions.

IV. APPENDICES

Supporting documents that add value or clarity to the information presented in the work plan should be included in the appendices of your continuation application. Recipients should revisit their logic model to ensure it aligns with the work plan proposed for the upcoming budget year. If the logic model is revised, it should be included as an appendix. Materials included in the appendices should present information clearly and succinctly. Extensive appendices are not required.

V. OTHER REQUIREMENTS

Federal Financial Report (SF – 425) (FFR)

Ensure you have submitted and your Grants Management Specialist has accepted your latest required FFR. Check the Federal Financial Report Cycle on your NOA for due dates.

Special Terms or Conditions

Ensure you have completed requirements for any special terms or conditions placed on your award during the project period.

Other Awards

If you have other awards with OASH or elsewhere in HHS, ensure you have met the terms and conditions and reporting requirements of those awards. Awards may be delayed until overdue progress reports, financial reports, or closeout documentation have been received.

PART THREE: APPLICATION SUBMISSION THROUGH GRANTSOLUTIONS

You must submit the non-competing continuation application electronically via GrantSolutions.gov.

Any applications submitted via hard copy or any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

You should submit your application as soon as possible but no later than **April 15, 2024**. Recipients are encouraged to initiate electronic applications early in the application development process, and to submit early on or before the due date. You should ensure your application is complete, accurate, and responsive to this guidance.

You may find your non-competing continuation application kit in GrantSolutions.gov. The application kit includes the following pre-determined fields:

- **Grantee NCC Guidance**
- **GrantSolutions Forms**
 - SF-424 – Application for Federal Assistance
 - SF-424A – Budget Information Non-Construction Program
 - SF-LLL – Disclosure of Lobbying Activities
- **Project Narrative**
 - Project Narrative – upload the project narrative **and** work plan for the upcoming budget year
 - Budget Narrative – upload the (1) detailed budget and budget narrative for the upcoming budget year, (2) estimated unobligated balance through June 30, 2024, and (3) carry over request (if applicable)
- **Additional Information to be Submitted (Appendix)** – upload the updated logic model, if applicable, and any additional documents needed to support the non-competing continuation application

Submitted non-competing continuation applications must contain all online forms, the program narrative (work plan), and the budget narrative (detailed budget and budget narrative) to be considered complete. Applications will not be considered valid until all application components are received.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide you with a confirmation page indicating the date and time (Eastern Standard Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission. As items are received by the OASH Grants and Acquisitions Management Division, the electronic non-competing application status will be updated to reflect receipt of the items. Recipients should monitor the status of their application in GrantSolutions to ensure all items are received.

If you encounter any difficulties submitting your NCC application through GrantSolutions.gov, please contact the GrantSolutions helpdesk at (866) 577-0771 or help@grantsolutions.gov prior to the submission deadline. If you need further information, contact your GMS. For programmatic information, please contact your PO.

**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-02453-BAH

[PROPOSED] ORDER

Before the Court is Plaintiffs' Emergency Motion for a Temporary Restraining Order, ECF No. 3. Having consider the memoranda filed in support and opposition to the motion, as well as all supporting materials filed on the docket in this matter and the oral argument of the parties, the Court hereby orders that the motion is **DENIED**.

SO ORDERED.

BERYL A. HOWELL
United States District Judge