

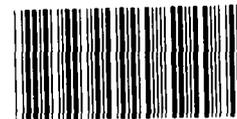
REPORT BY THE
Comptroller General
OF THE UNITED STATES

Restrictions On Abortion And Lobbying Activities In Family Planning Programs Need Clarification

Some family planning grant recipients' practices raised questions as to whether they comply with restrictions on abortion-related activities, but there was no evidence that title X funds had been used to pay for abortions or to advise clients to have abortions. The Department of Health and Human Services (HHS) needs to set forth clear guidance on the scope of abortion restrictions in its title X program regulations and guidelines.

Even if this is done, title X recipients would still be allowed to carry out abortion activities--not with title X funds, but as a part of their overall activities by organizationally separating the title X family planning program. The Congress may want to clarify its intent if it does not want title X funds to go to organizations providing abortions.

Lobbying by recipients was generally not paid with title X program funds and therefore not subject to Federal lobbying restrictions. However, recipients incurred some expenses that raised questions as to adherence with Federal lobbying restrictions. HHS needs to make its guidance in this area more specific and consistent.



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

B-206416

The Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate

The Honorable Jeremiah Denton
Chairman, Subcommittee on Aging,
Family and Human Services
Committee on Labor and Human Resources
United States Senate

In accordance with your September 8, 1981, request we have reviewed the family planning program authorized by title X of the Public Health Service Act to determine whether title X funds have been used to finance lobbying activities or to support abortion-related activities.

Comments were obtained only from the Department of Health and Human Services and not from individual grant recipients included in our review. In accordance with our policy, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of Health and Human Services; the Director, Office of Management and Budget; other interested congressional Committees and Subcommittees; the grant recipients included in the review; and other interested parties.

A handwritten signature in cursive script that reads "Charles A. Bowsher".

Comptroller General
of the United States

D I G E S T

Title X of the Public Health Service Act authorizes the Department of Health and Human Services (HHS) to make grants for a broad range of family planning services. Recipients of title X funds, however, are restricted from using program funds for abortions or certain abortion-related activities and for lobbying.

At the request of the Chairmen of the Senate Committee on Labor and Human Resources and the Senate Subcommittee on Aging, Family and Human Services, GAO reviewed the activities of selected title X grantees operating family planning clinics to determine whether title X funds were being used for such activities.

CLARIFICATION OF ABORTION
RESTRICTIONS NEEDED

GAO found no evidence that title X funds had been used for abortions or to advise clients to have abortions. Since 1971, HHS has held that the restrictions of section 1008 prohibiting the use of title X funds "* * * in programs where abortion is a method of family planning" are applicable to only that part of a recipient's operation supported by title X. HHS' interpretation of section 1008 allows title X recipients to use non-title X funds to carry out abortion-related activities which would not be allowed as part of the title X program, so long as the abortion activities are separated from the title X family planning services.

Thus, HHS' policy allows title X recipients to use organizational techniques to insulate the title X program from abortion activities prohibited by section 1008 and thereby not jeopardize their eligibility for title X funds. Because the distinction between the recipients' title X and other activities may not be easily recognized, the public can get the impression that Federal funds are being improperly used for abortion activities.

About 74 organizations receiving title X funds perform abortions at clinics colocated with family planning programs. Under HHS' policy, these agencies can organize family planning and abortion activities into separate programs and still comply with the HHS interpretation of section 1008.

Congressional guidance may be needed if the Congress does not want title X funds to go to organizations providing abortions.

FAMILY PLANNING CLINICS
NEED FORMAL GUIDANCE ON
ABORTION-RELATED MATTERS

HHS has traditionally held that section 1008 not only prohibits abortion as a method of family planning, but also prohibits activities which encourage, promote, or advocate abortion. These policies evolved from a series of HHS' legal opinions, but have never been set forth in regulations or guidelines--HHS' formal mechanisms through which policy is provided to grant recipients. In addition, the legal opinions do not always reach clinics and sometimes "draw a fine line" between allowable and unallowable activities, thereby failing to provide clear guidance on abortion-related matters.

GAO reviewed the activities of 14 family planning clinics to determine whether title X funds were being used for abortion-related activities. Although only six clinics had received copies of the legal opinions, clinic staff who counsel title X clients generally said they were aware of HHS' abortion policy restrictions, and GAO found no indications that any women were advised or encouraged to have abortions. However, GAO found variations in clinic practices, some of which GAO believes are questionable in light of HHS' interpretation of section 1008. These include:

- Counseling practices which do not present alternatives to abortion.
- Abortion referral practices which may go beyond HHS' referral policy.
- Using educational materials which present barrier methods of contraception with early abortion in case of failure as a method of family planning.

TITLE X RECIPIENTS NEED MORE
SPECIFIC GUIDANCE ON LOBBYING

Using title X program funds for lobbying-- attempting to influence legislation or appropriations pending before the Congress--is restricted by Federal appropriations laws, HHS' regulations and instructions, and the Office of Management and Budget's (OMB's) guidance. However, neither HHS nor OMB has specifically identified activities that constitute lobbying. Also, Federal guidance setting forth restrictions on dues paid to organizations that lobby is inconsistent between public and other non-profit title X recipients.

All seven title X recipients reviewed for lobbying had incurred expenses that, in GAO's opinion, raised questions as to adherence with Federal restrictions. Two recipients lobbied, but GAO could not determine from their records whether program funds were used. Most lobbying expenditures of the other five recipients did not involve program funds and were therefore not subject to Federal restrictions. However, of these five

--all used program funds to pay dues to organizations that lobby and

--two used small amounts of program funds to lobby at the Federal and/or State level.

While Federal cost principles clearly prohibit public organizations from using program funds for dues to organizations that do substantial lobbying, the cost principles for other nonprofit organizations are silent on this restriction. Nonetheless, such expenditures could be questioned in light of the restriction in HHS' appropriation law that the funds cannot be used to pay the salaries or expenses of any grantee, contractor, or their agent to engage in any activity designed to influence legislation pending before the Congress.

Two recipients used small amounts of program funds to attend conferences during which lobbying took place and to correspond with members and/or staff of the Congress to advocate for or against pending legislation. One recipient displayed a poster at a title X clinic that urged clients to write the Congress to defeat pending

legislation banning abortion. While any use of program funds in this lobbying effort was indirect, HHS holds that title X recipients are not to advocate abortions or promote a favorable attitude toward abortion.

HHS has recognized the need to establish more specific guidance on lobbying and the payment of dues to lobbying organizations. In this regard, HHS has initiated action to amend the cost principles for grantee organizations.

RECOMMENDATIONS TO THE SECRETARY OF HHS

Pending revision of Federal cost principles, GAO recommends that the Secretary provide interim guidance to title X recipients on activities that constitute lobbying and are therefore unallowable as program expenditures.

GAO also recommends that the Secretary establish clear operational guidance by incorporating into the title X program regulations and guidelines HHS' position on the scope of the abortion restriction in section 1008.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Even if the abortion-related recommendation to the Secretary is implemented, title X recipients would still be allowed to carry out abortion activities--not with title X funds, but as a part of their overall activities by organizationally separating the family planning program from those activities.

Because of the sensitivity of the abortion issue and the concern over how Federal family planning funds can be used, the Congress may want to provide guidance to HHS to clarify the intent of section 1008.

AGENCY COMMENTS

HHS agreed with GAO's recommendations. HHS plans to incorporate in its title X guidelines an explanation of its position on the implementation of section 1008 and to publish proposed regulations defining lobbying activities by title X and other grant recipients that are unallowable. GAO obtained comments only from HHS.

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ABBREVIATIONS

GAO General Accounting Office
HHS Department of Health and Human Services
OMB Office of Management and Budget

CHAPTER 1

INTRODUCTION

In a September 8, 1981, letter, the Chairmen of the Senate Committee on Labor and Human Resources and the Senate Subcommittee on Aging, Family and Human Services requested that we review selected aspects of the title X family planning program concerning compliance with prohibitions in Federal statutes governing abortion-related activities and lobbying. (See app. I.) Our review focused on the Department of Health and Human Services' (HHS') policies and practices for implementing and monitoring compliance with those Federal laws and the practices at selected title X recipients.

BACKGROUND

The Family Planning Services and Population Research Act of 1970 (Public Law 91-572) added title X to the Public Health Service Act. Project grants with public and private nonprofit organizations, operating voluntary family planning projects and clinics, are the major component of the title X program.

The 1970 Act established within HHS' Public Health Service an Office of Population Affairs to be directed by a Deputy Assistant Secretary. The act intended that the Deputy Assistant Secretary would administer all of the HHS programs related to family planning and population research and coordinate all domestic and international family planning activities administered by the Federal Government. In practice, however, family planning programs are administered by HHS' component agencies and the Deputy Assistant Secretary coordinates efforts.

The Office for Family Planning within HHS' Bureau of Community Health Services has overall responsibility for the title X program. The Bureau sets policy, issues guidance, and allocates funds for services to HHS' regional offices, which are responsible for the day-to-day administration of the Federal title X family planning program.

HHS' regional offices directly fund some organizations which provide family planning services, but most title X funds are awarded to intermediate organizations which distribute grant funds to delegate agencies that operate clinics. The intermediate organizations are responsible for administering the grant and for overseeing the activities of their delegate agencies. For example, Genesee Region Family Planning Program, Inc., in New York is an intermediate organization which funds seven delegate agencies that operate several clinics. It is responsible to HHS for the overall grant administration and, in turn, holds its delegate agencies responsible for proper administration of their respective subgrants.

Since 1970 HHS has provided over \$1 billion for project grants for family planning services under title X. In fiscal year 1982, \$124.2 million was appropriated for title X activities of which \$120.9 million was for family planning project grants. HHS awarded title X funds for family planning services to 223 direct grantees which funded 943 delegate agencies operating about 4,200 clinics. The type and number of grantees were as follows:

Types and Number of Title X Grantees

(as of April 1, 1981)

Public:	
State Health Departments	36
County Health Departments	33
City Health Departments	7
Trust Territory Health Departments	<u>6</u>
	<u>82</u>
Other nonprofit:	
Coordinating Councils	90
Planned Parenthood Affiliates	31
Hospitals	12
Universities	<u>8</u>
	<u>141</u>
Total	<u>223</u>

Family planning services provided by these grantees typically include:

- Physical examinations.
- Laboratory tests.
- Education and counseling concerning reproductive health and methods of birth control.
- Prescribing and distributing contraceptives.
- Sterilization.
- Pregnancy tests.
- Pregnancy counseling.

--Infertility services.

--Special services for teenagers.

Most clients of title X-supported clinics are not pregnant and generally receive only physical examinations, education on contraceptive methods, and services related to birth control. In 1978, the latest year for which national data were available, about 162,000 of the 1,466,000 women (or 11 percent) making their first visit to family planning clinics received pregnancy tests.

STATUTORY RESTRICTIONS ON ABORTION-RELATED ACTIVITIES AND LOBBYING

Activities related to abortions and lobbying are restricted by Federal laws. Section 1008 of title X states that "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." Restrictions on lobbying primarily stem from provisions in several annual appropriations acts that provide that no appropriated funds shall be used by grantees to influence legislation pending before the Congress.

OBJECTIVES, SCOPE, AND METHODOLOGY

Abortion-related activities

We reviewed HHS' program regulations and guidelines and other policy guidance implementing section 1008. We reviewed the grant awards and administration procedures followed in 6 of HHS' 10 regions. At each region, we interviewed program officials and examined grant documents to see how section 1008 was interpreted and implemented. These 6 regions administer grants totaling \$98 million (or about 80 percent) of the title X funds.

To test for compliance with the HHS policies, we reviewed the activities of 14 family planning clinics in California, Kentucky, Massachusetts, Maryland, Ohio, Texas, Vermont, and the District of Columbia. (See app. II.)

At the 14 clinics, we reviewed local policies and practices; interviewed staff responsible for counseling, education, and referral activities; ascertained the guidance furnished by HHS to title X recipients; and reviewed a limited number of client records selected randomly. In total we examined 474 records of pregnant clients to verify clinic counseling and referral practices. We do not consider this test to be representative of all title X clinics and the results should not be projected. We did not contact clients to obtain their views on the counseling provided because of concern about breaching client confidentiality.

We judgmentally selected the 14 clinics to provide for (1) geographic distribution of locations nationwide, (2) different types and sizes of title X recipients, and (3) rural and urban clinic settings. In selecting these locations, we avoided the title X recipients who were included in recently completed or on-going audits by HHS' Inspector General.

In addition, to ascertain how title X recipients that also provide abortions as part of their overall operations comply with HHS guidance, we conducted limited audit work at certain other title X clinics that provide family planning services and abortions. These clinics were located in California, Ohio, and New York.

The demographic data requested on clients who are pregnant when they first seek services in title X clinics are not collected by HHS' data systems, and comparative analysis of clients referred for abortions and educational materials used in public and private clinics could not be made. We did not undertake statistical tests to obtain the data because of the length of time that would have been required.

On February 22, 1982, HHS issued proposed regulations which would, among other things, require notification of the parents of unemancipated minors provided prescription methods of birth control. These proposed regulations are intended to implement section 931(b)(1) of the Omnibus Budget Reconciliation Act of 1981. At the time of our review these regulations had not been finalized.

Lobbying activities

Our review of title X recipients' lobbying activities focused on (1) identifying Federal laws, regulations, instructions, and other guidance applicable to lobbying by recipients and (2) determining whether recipients used Federal funds for lobbying. To ascertain whether grant recipients had sold or donated mailing lists to political candidates or organizations we held discussions with and reviewed the records of seven recipients. We found no indication that this practice occurred. In addition, we identified no Federal laws or regulations which prohibit this practice by grant recipients where it is not precluded in applicable grant documents.

We interviewed officials in HHS' Office of the Assistant Secretary for Management and Budget; Public Health Service's Office of Population Affairs, Bureau of Community Health Services, and Office for Family Planning; regional offices; and selected title X recipients to identify Federal lobbying restrictions and guidance provided to recipients. In addition, we interviewed (1) officials of the Office of Management and Budget (OMB) to identify existing and/or proposed lobbying restrictions in OMB circulars and (2) representatives of the Internal Revenue Service to discuss lobbying restrictions imposed on nonprofit, tax-exempt organizations.

Our review included work at seven nonprofit title X recipients in California, New Jersey, New York, and the District of Columbia. (See app. II.) We visited five grantees--three coordinating councils and two Planned Parenthood organizations--and two other Planned Parenthood organizations operating as delegates of two of the coordinating councils. All received title X grants or subgrants for \$125,000 or more. The five grantees included in our audit received about \$8.4 million of title X funds during their most recent budget period. These grantees and delegate agencies were selected judgmentally considering, among other things, their size, and avoiding duplicating locations included in recent audits by HHS' Inspector General. Planned Parenthood organizations were included because the requestors asked questions specifically about such organizations. Coordinating councils--nonprofit recipients covered by the same OMB circulars as Planned Parenthood organizations--were included so that a range of family planning organizations was represented. The largest delegate agency of two coordinating councils was also reviewed. The organizations reviewed are not statistically representative of title X grant recipients.

At the recipient level we interviewed the executive director, financial director, board members, and other representatives to ascertain whether they lobbied and whether title X program funds were used. We reviewed grant applications and budgets, financial expenditure reports, and audit reports and traced selected expenditures to source documents to ascertain whether they were related to lobbying activities. We also reviewed correspondence files, board minutes, and annual reports to the Internal Revenue Service to identify potential lobbying activities.

Our audit approach varied somewhat for each grant recipient because they had different accounting systems, received grants covering different periods, and were organized differently. In all cases, however, we reviewed selected expenditures made during January to June 1981, the period when the Congress was considering incorporating the title X program into a block grant, and during which time several bills were being considered in the Congress to limit the availability of abortions. We believe lobbying, if it occurred, would most likely have occurred during this period.

Our review did not include work at Planned Parenthood Federation of America because (1) according to HHS officials, the Federation did not receive title X funds during the period covered by our review and (2) as agreed with the requestors' offices, the results of our work on lobbying activities at the seven grant recipients did not indicate that further work was warranted.

Comments were obtained only from HHS and not from individual grant recipients included in our review.

As agreed with the requestors' offices, no work was done to determine how the effectiveness of the program can be evaluated because the title X program was being considered for inclusion as part of a block grant.

Our review was conducted in accordance with the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

CHAPTER 2

CONGRESSIONAL CLARIFICATION OF ABORTION RESTRICTIONS IS NEEDED

HHS' policy allows title X recipients to use organizational techniques to insulate the title X family planning program activities from abortion activities prohibited by section 1008, thereby not jeopardizing their eligibility for title X funds. That policy, established in 1971, stems from HHS' position that the restrictions of section 1008, prohibiting the use of title X funds "* * * in programs where abortion is a method of family planning" are only applicable to that part of the recipient's activities supported with title X funds. HHS' interpretation has created the impression, in some instances, that federally funded title X family planning clinics are engaging in prohibited activities.

In view of the sensitivity of the abortion issue and concern over how Federal family planning funds may be used, the Congress may want to clarify the intent of section 1008.

ORGANIZATIONAL ARRANGEMENTS USED BY SOME FAMILY PLANNING CLINICS

HHS estimates that about 74 organizations (46 hospitals, 21 Planned Parenthood affiliates, 4 other nonprofit organizations, and 3 public health departments) receiving title X funds also perform abortions at clinics colocated with family planning programs. ^{1/} While such organizations are expected to maintain physically separate family planning and abortion programs and separate records to account for each program, they are allowed to share facilities and staffs and to prorate common expenses. The examples below describe the organizational arrangements used by two title X recipients which enable them to provide both abortion and family planning services while still complying with HHS' policy.

Example #1

HHS has funded a nonprofit family planning organization located in Columbus, Ohio, since 1971. In 1978, the organization established a separate but controlled corporation for the sole purpose of providing first trimester abortions. The title X recipient has effective control of the corporation through interlocking trustees and the exclusive right and power to nominate and elect trustees.

^{1/}Information was not available on the number of family planning clinics that provided abortions at separate locations.

The abortion and family planning clinics operate simultaneously on Wednesdays and Fridays in the same three-story building, with nothing on the exterior of the building indicating the existence of two separate operations. The abortion clinic leases space on the second floor from the title X recipient, and the family planning clinic occupies the third floor. Under an informal agreement, the abortion clinic pays the title X recipient a management fee for services of the executive director and financial manager. Two other employees of the family planning clinic also work for the abortion clinic. The family planning clinic refers clients to the abortion clinic, but separate medical charts and patient accounts are established and maintained.

According to the executive director, the title X recipient established the separate corporation in order to avoid the appearance of violating restrictions imposed by section 1008. The abortion clinic performs about 1,000 abortions per year.

Example #2

HHS has funded a nonprofit organization in New York City which operates both abortion and family planning clinics. This title X recipient operates the abortion clinics under the same corporate organization, but separates the programs by scheduling clients at different times. At its Brooklyn clinic, for example, the scheduling was as follows:

	<u>Abortion clinic hours</u>	<u>Family planning and abortion postoperative hours</u>
Tuesday	8:30 to 10:00 a.m.	10:30 a.m. to 5:00 p.m.
Wednesday	8:30 to 10:00 a.m.	10:30 a.m. to 5:00 p.m.
Thursday	8:30 to 10:00 a.m.	10:30 a.m. to 5:00 p.m.
Friday	None	11:00 a.m. to 7:00 p.m.
Saturday	8:30 to 10:00 a.m.	10:30 a.m. to 5:00 p.m.

Both the family planning and abortion clinics are staffed by the same personnel, and the medical director for the family planning program generally performs the abortions for the clinic as well. The clinic director said that the abortion and family planning clinics' schedules did not overlap and that clients were not commingled.

The expenses of the clinic operations are maintained in separate accounts. All direct costs are charged specifically to family planning, abortions, or laboratory services as appropriate and indirect costs are prorated. Unlike the operation in the

Ohio example, separate medical charts and patient accounts are not maintained, and all abortion clients are counted as family planning clients in the HHS reporting system. In 1980 the Brooklyn clinic served 4,462 contraceptive clients and performed 2,341 abortions. 1/

BASIS FOR HHS' POLICY

HHS' policy which permits funding organizations which operate abortion clinics outside the title X program is based on its assessment of the legislative intent. According to HHS' General Counsel, the most significant expression of that intent is contained in the Conference Report accompanying the Senate bill which eventually became Public Law 91-572. The Conference Report contained the following statement:

"It is, and has been, the intent of both Houses that the funds authorized under this legislation are used to support preventive family planning services, population research, infertility services and other related medical, informational, and educational activities. The conferees have adopted the language contained in Section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent. The legislation does not and is not intended to interfere with or limit programs conducted in accordance with State or local laws and regulations which are supported by funds other than those authorized under this legislation." 2/ (Underscoring added.)

In addition, HHS considers the statement on the floor of the House by the sponsor of section 1008 to be another major source of congressional intent:

"Mr. Speaker, I support the legislation before this body. I set forth in my extended remarks the reasons why I offered the amendment which prohibited abortion as a method of family planning * * *"

1/Because questions were raised during a previous GAO review as to whether certain practices at this clinic were in conformity with HHS' interpretation of section 1008, GAO sent a letter of inquiry to HHS. Using information obtained during an audit by the Inspector General, HHS' Office of General Counsel reviewed the concerns raised in our letter and concluded no violations of section 1008 were indicated at the clinic.

2/Conference Report, H. Rep. No. 91-1667, December 3, 1970, pages 8 and 9.

* * * * *

"With the 'prohibition of abortion' the committee members clearly intended that abortion is not to be encouraged or promoted in any way through this legislation."

* * * * *

"Programs which include abortion as a method of family planning are not eligible for funds allocated through this Act." 1/ (Underscoring added.)

Based on these expressions of the congressional intent, HHS has adopted the view that section 1008 prohibits (1) the provision of abortion as a method of family planning and (2) activities that promote or encourage the use of abortion as a method of family planning--but only when included in "programs" funded by title X.

Implementation of HHS' policy position at the local level can leave the impression that title X funds have been improperly used when recipients also operate abortion clinics. For example, HHS region V received a letter alleging that the abortion clinic operated by the Ohio organization discussed in example #1, "* * * invites the abuse of public funds in terms of channeling federal monies into the operation of an abortion clinic * * *." The individual was advised by HHS regional officials:

"* * * that to persons not intimately familiar with a given situation, the operation of an abortion facility at the same site as a federally sponsored family planning clinic brings to mind the possibility of inappropriate sharing of resources and undue influences on family planning services * * *."

Thus, the HHS policy permits title X recipients to organize so as to conduct abortion activities under a separate "program" without jeopardizing their eligibility for title X funds.

MATTERS FOR CONSIDERATION
BY THE CONGRESS

HHS' interpretation of section 1008 allows title X recipients to use non-title X program funds to carry out abortion-related activities which would not be allowed as part of the title X program, so long as the abortion activities are organizationally separated from the title X family planning services.

1/116 Cong. Rec. 37375 (1970).

Because of the sensitivity of the abortion issue and the concern over how Federal family planning funds may be used, the Congress may want to provide guidance to HHS to clarify the intent of section 1008 if it does not want title X funds to go to organizations providing abortions.

CHAPTER 3

FAMILY PLANNING CLINICS NEED FORMAL GUIDANCE ON ABORTION-RELATED MATTERS

We found no evidence that women had been advised by title X grantees to have abortions or that title X funds were used to pay for abortions. However, some title X recipients' practices raised questions as to whether they comply with certain title X restrictions on abortion-related activities.

The questions stem from the fact that HHS has not issued formal policy guidance interpreting section 1008. Instead, HHS has relied on a series of legal opinions that often "draw a fine line" between allowable and unallowable activities and these opinions have not always been communicated to all title X recipients.

HHS' INTERPRETATION OF SECTION 1008

Since early 1971, HHS has taken the position that section 1008 prohibits activities that encourage, promote, or advocate abortion, as well as the use of abortion as a method of family planning, if they are carried out as part of the program supported with title X funds. These policy positions, based on the internal HHS General Counsel opinions, have not been formalized and incorporated into program regulations and/or guidelines.

Based on HHS' legal opinions, the following types of activities related to abortions are allowable under title X programs. Recipients may

- provide information about abortion services;
- provide the name, address, and telephone number of abortion providers;
- collect statistical data and information regarding abortion;
- inspect facilities to determine their suitability to provide abortion services; and
- pay dues to organizations that advocate the availability of abortion services.

Recipients may not

- provide counseling that encourages a person to obtain an abortion,

- provide transportation to an abortion center or provider,
- provide proabortion speakers to debate the issues in public forums,
- advocate the need and suitability of abortion service in the community,
- produce or show movies that tend to encourage or promote a favorable attitude toward abortion,
- provide abortion as a suitable backup method of family planning,
- make specific appointments or referrals for an abortion unless medical conditions warrant,
- bring legal action to liberalize abortion-related statutes, and
- pressure local governing bodies to change restrictive abortion policies.

HHS' General Counsel has also concluded that, when title X recipients conduct abortion activities which would not be permissible if they were part of the grant-supported program, the recipient must ensure that the title X-supported program is separate and distinguishable from the abortion activities.

This position is contained in the following excerpt from an HHS legal opinion. 1/

"It is recognized that in some situations, the abortion element in a program of family planning services may bulk so large and be so intimately related to all aspects of the program as to make it difficult, if not impossible to separate the eligible and non-eligible items of cost. In such a case, we think a grant for the project would be legally questionable.

"In other words, a mere technical allocation of funds, attributing Federal dollars to non-abortion activities and other dollars

1/Memorandum GC (Mangel) to DASPA (Hellman), "Abortions as a Method of Family Planning--Section 1008 of the Public Health Service Act," April 20, 1971, DF#38B.

to abortion activities, in what is otherwise a discrete project for providing abortion services, would not, in our opinion, be a legally supportable avoidance of the section 1008 prohibition.

"In our opinion, the activities (abortion and non-abortion) must be so separated as to constitute separate programs (projects). As we have already indicated, our conclusion does not require separate grantees or even a separate health facility. However, neither do we think that separate booking [sic] entries alone will satisfy the spirit of the law."

Over the years a fine line between allowable and unallowable activities has evolved as illustrated by the following examples:

- Recipients may use title X funds to pay the cost of inspecting abortion facilities to see that they meet national Planned Parenthood Federation of America standards, but may not make an appointment for or direct clients to those facilities.
- Title X funds may be used to pay dues to organizations that advocate the provision of abortion as a backup for contraceptive failure, but may not be used to advocate the need for and suitability of abortion in the community.
- Title X funds may not be used to pay transportation costs for women to go to abortion clinics, but recipients may provide or arrange such services under that part of their operation not supported with title X funds. Similarly, the recipients may, under their separate programs, make loans to women to pay for abortions.

HHS' PROGRAM REGULATIONS AND
GUIDELINES DO NOT REFLECT ITS
POLICY ON ABORTION RESTRICTIONS

The position that section 1008 not only prohibits abortion as a method of family planning, but also prohibits activities which promote or encourage a favorable attitude toward abortion as part of the title X program has not been incorporated into HHS' regulations or guidelines. In contrast, HHS relies on its program regulations 1/ and guidelines to provide guidance on other major policies to title X recipients. In effect, HHS' regulations that spell out

1/42 C.F.R. Part 59.

overall policy and implement provisions of the law and corresponding program guidelines that elaborate on the law and regulations in operational terms do not contain the specific policy guidance concerning section 1008 needed by title X recipients.

We could not determine from discussions with HHS' officials the reasons why HHS elected to exclude from its regulations and guidelines its position on the scope of prohibitions in section 1008. HHS' regulations (dated June 1980) and its prior regulations simply state that title X projects shall not "* * * provide abortion as a method of family planning." The policy that section 1008 also prohibits activities which promote, encourage, or advocate abortion are not mentioned in HHS' regulations. Also, the HHS program guidelines for family planning services refer to the title X program regulations with no elaboration on the meaning of section 1008.

HHS, however, has periodically issued memorandums to its regional program administrators containing Office of General Counsel interpretations of section 1008. Five of six regions we visited had transmitted this information to grantees, but only 3 of the 10 grantees passed it on to their delegate agencies and clinics. Of 14 clinics visited, only 6 had received HHS' legal interpretations of section 1008.

While this process made HHS' policy available to some title X clinics, the policy was nevertheless not included in the regulations and guidelines that grantees are required to follow as a condition of their grants. For example, the title X grantee in Los Angeles, according to its executive director, has received no written guidance from HHS on interpreting section 1008. This grantee, one of the largest nationally, had 26 delegate agencies that operated 94 clinics.

SOME COUNSELING AND REFERRAL PRACTICES MAY NOT BE APPROPRIATE

Under the HHS program guidelines, pregnant women should be offered information and counseling regarding their pregnancy. The guidelines state that individuals requesting information on options for managing an unintended pregnancy are to be given nondirective counseling 1/ on the options available and referred upon request, including being referred to abortion providers. At the clinics reviewed, the number of pregnant clients coming to clinics for their first visit represented between 5 and 69 percent of the clientele.

1/Nondirective counseling is the provision of information on all available options without promoting, advocating, or encouraging one option over another.

At 10 of the 14 clinics visited, counseling was available through the title X-supported programs. At the four other clinics, one did not provide any counseling and the other three provided counseling, but not as part of their title X programs. Officials at all clinics which provided counseling indicated that they provided only nondirective counseling in accordance with HHS guidelines. Referral practices varied from clinic to clinic, and some clinics did not comply with HHS' policy position. We did not find any evidence, however, that pregnant women were advised to have abortions. 1/

Counseling practices

Typically, counseling of pregnant women occurred after clients received tests that confirmed their pregnancy. When the pregnancy was desired, clients were generally advised to seek prenatal care and given referrals if needed. If a woman indicated the pregnancy was unintended or not wanted, counseling was generally provided. Officials at the 13 clinics offering counseling said that nondirective counseling was available on the following options:

- Prenatal care and delivery.
- Infant care, foster care, or adoption.
- Pregnancy termination.

The pregnancy counseling provided by clinics varied as shown below:

- Seven clinics counseled clients, but only on the option they decided to pursue.
- Four clinics counseled clients on all options when the client expressed that the pregnancy was unintended or she was unsure of what to do.
- Two clinics counseled all pregnant women on all options available to them.

One of the 13 clinics offered followup counseling to clients referred for abortions, although officials at all clinics said postabortion counseling was available if requested by the clients.

According to HHS' headquarters officials, all options do not have to be discussed, but they believe it is "professionally incumbent" upon the counselors to discuss other options with women

1/None of the clinics reviewed provided or referred any client for menstrual extraction procedures.

who say they are only interested in abortions. When a woman is interested in continuing her pregnancy, HHS' officials said that abortion should not be discussed.

Eleven of the clinics required their counseling staffs to take training and/or participate in an appropriate orientation course covering problem pregnancy counseling and referral policies. The academic background of the staff providing counseling varied. Registered nurses and nurse practitioners often provided the counseling to pregnant clients. At some clinics, counselors had advance degrees in the fields of psychology or social work, and at other clinics the counselors had no formal credentials or degrees in areas related to counseling. Typically, the counselors had not received formal training in counseling pregnant women, but at most clinics counselors had some formal or in-service training in related areas, such as crisis counseling.

We were advised by clinic officials that the topic of abortion and counseling often came up spontaneously during in-service training and other courses. Clinic officials said they always emphasized a nondirective and unbiased approach to counseling pregnant women. Interviews with several counselors showed that they were aware of restrictions against encouraging or advising clients to have abortions.

Questionable counseling practices

Seven clinics did not provide counseling on all options available to pregnant women. At one clinic, women were required to complete paperwork before their pregnancy tests and preselect how they intended to deal with their pregnancy. If they chose to continue the pregnancy, they were counseled on that option. If they checked abortion, they were counseled only on that choice. Six other clinics, which did not require prepregnancy test decisions, did not routinely counsel women on other alternatives if they had decided on abortion. Based on the HHS guidelines which recommend that all options be discussed with clients deciding on abortion and HHS' officials views that it is "professionally incumbent" to discuss all options, these practices are questionable.

Referral process

When clients are counseled and choose to terminate their pregnancies, referrals may be made to abortion providers. The extent to which clinic personnel can assist clients in making abortion arrangements is limited, according to HHS' interpretation of section 1008. HHS' referral policy, however, is not clearly stated in the program regulations or guidelines and certain abortion referral practices by title X recipients raise questions as to whether they go beyond the "mere referral" HHS maintains is permitted under the law.

Title X regulations require that each project provide clients with medical services related to family planning and make referrals to other medical facilities when medically indicated. Therefore, if continuing a pregnancy would endanger the mother's life, a referral to a provider who might recommend or provide an abortion would be medically indicated. However, the regulations are silent on the referral process for abortions in other instances.

Since 1971, HHS has relied on legal opinions that applied the concept of "mere referral" to the restriction imposed by section 1008. Under this concept, title X program funds may not be used to make an appointment for a woman, to provide transportation, or to take other affirmative action to secure an abortion.

The title X program guidelines, issued in 1981, provided that women needing services, which are beyond the ability of the clinic to provide, should be referred to other providers for care. This provision, however, as it relates to abortion referrals, does not reflect the "mere referral" concept traditionally held by HHS. Although HHS' officials advised us that the "mere referral" concept has been agency policy on abortion referral, they did not explain why this policy had not been included in program regulations or guidelines.

We reviewed several clients' charts to determine, among other things, the referral outcomes at the clinics visited. The results of our review cannot be projected, but provide a limited perspective on referral outcomes at these particular clinics. The results are shown on the next page.

Some clinic practices may go beyond "mere referral"

Referral practices varied, but most clinics provided some type of information on the sources of abortion services to clients desiring to terminate pregnancies. By applying HHS' policy, we identified the following practices that could be construed to go beyond the "mere referral" policy:

- Four clinics provided clients brochures prepared by abortion clinics. Some of the HHS regional staff were not sure this practice was acceptable, while others felt it was reasonable and within the spirit of HHS' policy.
- At two clinics, clients seeking abortions were allowed to use the telephone to make appointments for abortions. HHS' officials were not sure this practice was within the spirit of the HHS policy because it went beyond the concept of providing information with no further affirmative action.

Summary of Referrals Made by Title X Recipients

<u>Clinic type</u>	<u>Estimated pregnant women (note a)</u>	<u>Records reviewed and age of clients</u>			<u>Type referrals made</u>					
		<u>19 and under</u>	<u>20 and over</u>	<u>Total</u>	<u>Pre-natal</u>	<u>Adop-tion</u>	<u>Abor-tion- (note b)</u>	<u>Mul-tiple (note b)</u>	<u>None</u>	<u>Not in-dicated</u>
Public:										
City/County	14	8	6	14	8	-	-	-	-	6
County	25	10	3	13	4	2	2	-	-	5
County	348	4	46	50	48	-	1	-	-	1
County	899	18	32	50	27	-	10	1	3	9
Other nonprofit:										
Planned Parenthood	402	11	39	50	15	-	15	12	1	7
Planned Parenthood	25	11	14	25	1	-	1	1	-	22
Planned Parenthood	592	22	28	50	13	1	5	-	-	31
Planned Parenthood	50	20	30	50	14	-	26	-	-	10
Planned Parenthood	551	24	26	50	24	-	21	2	-	3
Planned Parenthood	(c)	10	12	22	1	-	19	1	1	-
University	220	22	28	50	25	1	-	-	-	24
University	(d)	-	-	-	-	-	-	-	-	-
University	(e)	-	-	-	-	-	-	-	-	-
Private	53	9	41	50	42	-	-	1	3	4
Total	<u>3,179</u>	<u>f/169</u>	<u>305</u>	<u>474</u>	<u>222</u>	<u>4</u>	<u>100</u>	<u>18</u>	<u>8</u>	<u>122</u>

a/Information concerning marital status, race, and previous abortion history was not maintained or was incomplete.

b/In some instances women received referral for both abortions and prenatal care.

c/No estimate available.

d/Clinic did not offer pregnancy counseling.

e/No client files reviewed--clinic did not have current contract with title X grantee.

f/In total 116 clients were 18 years old or younger.

--At one clinic, appointments for abortions were made for clients who did not speak English. (The HHS Inspector General identified two other instances of counselors making abortion appointments for clients.)

--At one clinic, the title X recipient provided women loans for abortions from nonprogram funds; however, administrative costs associated with the referral and loans were charged to title X program costs. (A similar observation was noted by HHS' Inspector General.)

The Office of the Inspector General also identified that several title X clinics in Indiana provided and witnessed the signing of consent forms required by an abortion clinic. This practice is prohibited by section 1008, according to HHS, since it could be considered promoting abortion. The title X grantee indicated that the consent form was completed only after women had decided to have an abortion and that the practice simply facilitated the abortion decision and did not encourage or promote abortion. HHS regional officials ordered the practice stopped as part of the title X program, and the recipient told us it had passed the instructions to its delegates.

SOME EDUCATIONAL MATERIALS USED IN
TITLE X CLINICS MAY BE IMPROPER

Five clinics routinely offered educational materials to family planning clients that presented abortion as a backup if a contraceptive method failed. Other clinics, however, did not use educational material referring to abortion since they felt it could be construed as encouraging or promoting a favorable attitude toward abortion. Examples of educational material included:

--One clinic used a film about birth control methods and sterilization that included a section that presented abortion as a legal alternative in the event of an unwanted pregnancy. This film was shown to all clients entering the large Texas clinic for family planning services. At our request, HHS' regional officials watched the film and concluded the film did not encourage abortion as a method of family planning, but could be construed to be encouraging a favorable attitude about abortions.

--Four of the 14 clinics provided or made available to all clients entering the family planning program handout material that discussed abortion. Typically, handout materials listed various birth control methods with the barrier method and early abortion in the event of a failure

as an alternative method. According to an HHS General Counsel opinion, section 1008 prohibits the use of abortion as a backup method of family planning and therefore cannot be offered.

MONITORING FOR COMPLIANCE WITH
SECTION 1008 IS LIMITED

HHS' officials responsible for monitoring the title X program have generally not taken inspection trips solely to check for compliance with section 1008, but they claimed to have looked at compliance with all program guidelines and requirements in instances where onsite inspections have been conducted. In the absence of HHS' regulations and guidelines that elaborate national policy established by section 1008, efforts to closely monitor compliance are difficult.

Officials at four HHS regions said that travel budget cuts and lack of personnel have prevented regular monitoring trips to all grantees. One official advised us that the high visibility of the abortion issue tends to surface possible gross violations and reduce the need for regular surveillance of grantee activities.

HHS' policy requires that all allegations of violations of section 1008 be investigated by a team composed of personnel familiar with all aspects of the title X program and overall HHS' grant administration. We were advised that only one investigation had been made. In this case, the title X recipient was alleged to be

- encouraging or promoting abortion by administering a petition calling for liberalized abortion laws,
- providing literature that promoted a favorable attitude about abortion in a common waiting room for family planning and abortion clients, and
- facilitating abortions by negotiating reduced fees and making arrangements for abortions.

HHS' investigation found that the title X recipient carried out the alleged activities, but could not determine if they were a part of the title X-funded program. The grantee was advised to remove the petitions and abortion materials from the waiting room and to set up a bookkeeping system to keep costs separated. The investigation concluded the practices were minor and technical in nature and did not warrant further action.

Until 1981, HHS' Office of the Inspector General had not made a programwide review of compliance with section 1008. In 1981 the Inspector General reviewed 32 title X grantees, focusing on lobbying and abortion activities. The Inspector General review has been completed and reports on individual recipients have been issued. In addition to the practices discussed on page 18, at one grantee the Inspector General questioned about \$400 for malpractice insurance for an abortion clinic charged to the program funded, in part, by title X.

CONCLUSIONS

Since 1971, HHS has held that the abortion prohibition went beyond the literal reading of section 1008 and also prohibited activities which promoted or encouraged abortions. However, HHS has neither clarified its policy nor used its regulations and guidelines to communicate to title X recipients its position on section 1008. As a result, a degree of uncertainty exists and some grantees' practices may go beyond what, in HHS' opinion, is permissible under section 1008.

RECOMMENDATION TO THE SECRETARY OF HHS

We recommend that the Secretary establish clear operational guidance by incorporating into the title X program regulations and guidelines HHS' position on the scope of the restriction in section 1008.

In doing so, we recommend that the Secretary consider the grantee practices discussed in this report and in the Inspector General's reports with a view toward providing as explicit guidance as possible on the activities that are and are not allowed.

AGENCY COMMENTS

HHS concurred with our recommendation. The Secretary plans to direct the Assistant Secretary for Health to include in title X program guidelines an explanation of the Department's position on the implementation of section 1008. (See app. III.)

CHAPTER 4

TITLE X RECIPIENTS NEED MORE

SPECIFIC GUIDANCE ON LOBBYING

Most of the title X recipients reviewed for lobbying were involved in some types of lobbying activities. Generally, these activities were not paid for with appropriated funds or charged to the title X program and were therefore not subject to Federal lobbying restrictions. However, some title X recipients used program funds to pay dues to organizations that lobby--a questionable expenditure in light of current legislative restrictions and HHS' policies. In addition, some recipients spent small amounts of title X program funds for lobbying.

The current OMB and HHS guidance regarding the use of program funds for the payment of dues is inconsistent, and guidance on lobbying does not specifically identify the types of activities that constitute lobbying and are therefore unallowable as title X program expenditures.

FEDERAL RESTRICTIONS ON LOBBYING

Federal law prohibits grant recipients from using Federal funds to lobby the Congress--that is, to engage in activities designed to influence legislation or appropriations pending before the Congress. Under HHS' policy, lobbying costs are not normally allowable program expenses. However, HHS has not issued specific guidance which identifies activities that constitute lobbying.

Legislative restrictions

The use of appropriated funds, including title X funds, to lobby the Congress is prohibited by Federal appropriations legislation. Since the early 1950s, an annual appropriation act restriction has prohibited the use of Federal funds by all executive agencies, departments, and government corporations for "grass roots" lobbying the Congress--appeals addressed to the public to contact the Congress to influence pending legislation. ^{1/} Also, since fiscal year 1974, HHS, in its own annual appropriations legislation, has been prohibited from using appropriated funds for publicity and propaganda to support or defeat legislation pending before the Congress, except when officials are presenting views to the Congress that affect HHS' activities and policies. The scope

^{1/}Initially this antilobbying appropriation restriction was contained in the Independent Offices Appropriation Act; however, in recent years, it has been included in the annual Treasury, Postal Services, and General Government Appropriation Act.

of these restrictions was expanded by HHS' fiscal year 1979 1/ appropriations act which prohibits HHS' grant and contract recipients from using HHS' appropriations for lobbying the Congress as follows:

"No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress." (Underscoring added.)

These restrictions in Federal appropriations legislation apply only to lobbying the Congress.

Administrative restrictions

HHS' and OMB's guidance implementing Federal lobbying restrictions are inconsistent and lack specificity.

HHS' guidance generally prohibits the payment of any lobbying costs with program funds, which includes not only title X grant funds, but also non-Federal funds used by recipients to meet their grant matching shares and income generated as a result of the grant. This guidance applies to the use of program funds not only for lobbying at the Federal level, but also at the State and local levels. The prohibition was set forth in an HHS Grants Administration Manual Circular issued May 25, 1979, which stated that the costs of lobbying expenditures are normally unallowable because they do not benefit the work performed under the grant. 2/

HHS' regulations require title X grant recipients to follow applicable OMB guidance in the administration of their grants. According to the OMB circular setting forth cost principles that must be followed by State and local government grant recipients, 3/ program funds can be used to pay dues to civic, business, technical, and professional organizations, but only if such organizations do not devote a substantial part of their activities to lobbying.

1/This restriction was not applicable for title X recipients until 1980 because title X appropriations were not included in HHS' fiscal year 1979 appropriations, but rather in a separate Continuing Resolution.

2/In some situations, expenses associated with lobbying at the State and local levels would be allowable program charges, such as when grantees' programs include an advocacy function.

3/OMB Circular A-87.

However, this restriction is not included in OMB's circulars setting forth cost principles for universities and nonprofit organizations 1/ nor HHS' cost principles for hospital grant recipients 2/-- both of which simply provide that dues are an allowable program expense, without distinguishing between organizations that lobby and those that do not. As a result, nonprofit recipients do not have the same lobbying restrictions on dues as public recipients.

Most importantly, neither HHS' nor OMB's principles specifically identify activities that constitute lobbying and that are therefore unallowable as program charges.

LOBBYING BY TITLE X RECIPIENTS

All seven title X recipients reviewed for lobbying had incurred expenses that, in our opinion, raised questions as to adherence with Federal restrictions. Two recipients lobbied, but we could not determine from their records whether program funds were used. Most lobbying expenditures of the other five recipients did not involve program funds and were therefore not subject to Federal restrictions. However, of these five

--all used program funds to pay dues to organizations that lobby and

--two used small amounts of program funds to lobby at the Federal and/or State level.

Dues paid to organizations that lobby

Six recipients, including five who clearly used program funds, paid dues to organizations that lobby at the Federal level. The recipients' program expenditures for such dues ranged from \$25 to over \$27,000 during the period covered by our review, and the combined expenditures of the five recipients was about \$42,000. Although the payment of dues by nonprofit organizations is an allowable program expense, the use of program funds to pay dues to organizations that lobby substantially for or against pending legislation that affects the grant program is questionable in light of current legislative prohibitions against using appropriated funds for lobbying and HHS' policy that generally prohibits program expenses for lobbying.

We discussed the payment of dues to organizations that lobby with three recipients. Officials of two recipients said dues to professional organizations should be allowable because such

1/OMB Circulars A-21 and A-122.

2/HHS issues cost principles for hospitals, not OMB.
See 45 CFR Part 74.

organizations provide many needed services. One executive director told us that he did not think the payment of dues to lobbying organizations is currently prohibited by HHS and that it should not be. However, to ensure the allowability of expenditures for dues to an organization that lobbied at the State level, he noted, in his letter transmitting payment, that his dues should be used for educational purposes. The executive director of the third recipient, rather than having a firm position, sought guidance as to whether he should stop paying dues with program funds.

Program funds used for
lobbying activities

Two recipients spent program funds for lobbying at either the Federal or the State level. Lobbying at the Federal level is prohibited by Federal law and administrative policy. Lobbying at the State level generally is prohibited by administrative policy only. As shown below, the title X program expenditures associated with lobbying activities were small and, in some cases, indirect.

At the Federal level:

- Two recipients spent program funds for transportation, lodging, and other expenses associated with attending conferences in Washington, D.C., during which officials visited Members of Congress and/or their staff and lobbied against pending legislation to incorporate title X into a block grant. About \$200 was spent for this activity.
- One recipient incurred undetermined costs associated with writing the Congress to lobby against pending legislation. The costs involved salaries and expenses related to preparing and distributing the correspondence.
- One recipient displayed a poster and distributed post cards at a title X clinic encouraging clients to write their congressional representatives to urge them to vote "pro choice" on pending legislation. Costs associated with this activity were too obscure to calculate. However, HHS holds that title X recipients are not to advocate abortions or even foster a favorable attitude toward abortions.

At the State level:

- One recipient incurred costs for attending a conference that involved lobbying at the State level. About \$113 was spent on this activity.
- One recipient provided space for about 6 weeks in a title X clinic to an organization involved in lobbying at the State level and, as a result, program funds were indirectly involved.

Recipients did not agree with our observations that the costs of these activities were unallowable program expenditures because they were associated with lobbying. For example, one executive director said he thought that meeting and corresponding with Members of Congress was more an educational activity than a lobbying activity. He told us that he had not received clear guidance explaining activities which constitute lobbying. Another executive director disagreed that displaying the poster was an improper activity because (1) Federal funds were not used to print it and (2) it was more an advertisement than a lobbying effort.

HHS' EFFORTS TO CLARIFY LOBBYING GUIDANCE

HHS has recognized the need to clarify guidance provided recipients on lobbying and has begun taking corrective measures. In response to inquiries about the possible misuse of Federal funds for lobbying, the Secretary of HHS asked the Assistant Secretary for Management and Budget to identify ways to reduce possible abuse. In June 1981, the Assistant Secretary suggested several steps that could be taken, including (1) making grant recipients aware of applicable restrictions, (2) increasing monitoring, and (3) identifying clearly activities considered unallowable.

In October 1981, HHS recommended that OMB review its cost principles to clearly set forth unallowable lobbying activities and to prohibit all recipients, including nonprofit organizations, from using program funds for dues to organizations that devote a substantial part of their activity to lobbying. HHS believes that lobbying restrictions should be set forth on a Government-wide basis and, therefore, guidance for nonprofit grantees should be issued through OMB. However, we were told that, if OMB does not revise its cost principles, HHS will issue restrictions on lobbying as part of its policy guidance. In late June 1982, OMB officials told us no final determination had been made on how its cost principles will be changed to reflect lobbying restrictions.

CONCLUSIONS

Clear Federal guidance is needed both to insure that title X program funds are not used for lobbying and to preclude unnecessary controversy over whether grantees are violating Federal restrictions. The move to revise and make more specific the cost principles applicable to all Federal grantees is the appropriate mechanism to achieve these ends. Until this is done, however, HHS should provide title X grantees interim guidance concerning the activities that constitute lobbying and are therefore unallowable as program expenditures.

RECOMMENDATION TO THE
SECRETARY OF HHS

Pending revision of Federal cost principles, we recommend that the Secretary provide interim guidance to title X recipients on activities that constitute lobbying and are unallowable as title X program expenditures.

AGENCY COMMENTS

HHS concurred with our recommendation. In the near future, HHS plans to issue proposed regulations defining lobbying activities that are unallowable in its programs, including title X programs. (See app. III.)

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United States Senate

COMMITTEE ON LABOR AND
 HUMAN RESOURCES
 WASHINGTON, D.C. 20510

September 8, 1981

Mr. Gregory J. Ahart
 Director
 Human Resources Division
 United States General
 Accounting Office
 441 G Street, N. W.
 Washington, D. C. 20548

Dear Mr. Ahart:

As you know, the Title X Family Planning program has not been consolidated into a block grant as proposed by the President but has been reauthorized as a categorical program for another three years. The Committee on Labor and Human Resources and its Subcommittee on Aging, Family and Human Services are very much interested in the operation of this program and plans for extensive oversight of the program.

During the last several months, Committee staff have been discussing three areas of interest regarding the Title X program with your representatives. These areas are (1) use of Title X funds for political lobbying, (2) use of Title X funds for abortion or abortion referrals, and (3) the overall effectiveness of the program. We understand that you have done some preliminary audit work in the first two of these areas. Now that the budget reconciliation process has been completed, we have identified several specific concerns in each of these three areas.

Following are several questions of interest to us in these areas. To the extent data are available, we would like to have information on all Title X grantees. In cases where national data are not available, we would like you to select a sample of grantees or clinics, including, as appropriate, coordinating councils, health departments, and planned parenthood affiliates. We understand you have already reported on political activities of some community action agencies, a number of which are Title X grantees.

USE OF TITLE X FUNDS FOR POLITICAL ACTIVITIES

1. What Federal laws and regulations or instructions or guidance issued by Federal agencies pertain to lobbying activities by Title X grantees and clinics?

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2. Is there any evidence that Planned Parenthood Federation of America, or its affiliates has either donated or sold at minimal costs mailing lists to political candidates or organizations? Is there evidence that this represents a violation of Federal laws or regulations?
3. What types of political lobbying activities are Title X grantees or clinics carrying out, are Title X funds used, and are any of these activities prohibited by Federal laws, regulations, or instructions?

Activities in question include such actions as advertising, direct mailings, voter registration, telephone canvassing or "hotlines", or payment of dues to lobbying organizations.

4. Is there any evidence that Planned Parenthood Federation of America used Title X funds or any other federal funds for political lobbying activity during 1980 or 1981? Are dues collected from Title X funded affiliate organizations considered "Federal funds" for purposes of lobbying prohibitions? Is there any evidence that grantees are able to increase their political activities using funds "freed" by the presence of federal funds?

USE OF TITLE X
FUNDS FOR ABORTIONS
OR ABORTION REFERRALS

1. What activities has HHS identified as allowable or unallowable relative to section 1008 and how has HHS informed Title X recipients of these? What guidance or instructions has HHS issued to Title X grantees for abortion referrals?
2. How does HHS monitor Title X recipients for compliance with section 1008 and what enforcement actions has HHS taken relative to section 1008 during the last few years? Do HHS' monitoring actions appear adequate to detect compliance with section 1008? How many organizations receiving Title X funds perform abortions either at the same location where Title X services are provided or at separate locations?
3. How many Title X recipients has HHS found to be using Title X funds for abortions or abortion related services, including referrals? Have you or HHS identified any Title X recipients performing menstrual extractions without performing pregnancy tests which may, in fact, be abortions?
4. In testifying before this Committee in March 1981, you indicated that one Title X grantee--Planned Parenthood of New York City--may not have been in compliance with section 1008 restrictions and that you would be referring this matter to HHS' Inspector General for further evaluation. When did you make this referral and what actions has HHS taken?

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5. What steps do Title X clinics that perform abortions or make abortion referrals take to comply with section 1008? Do such organizations account for abortions and abortion referrals separately?
6. To the extent information is readily available or ascertainable,
 - How many clients are pregnant when they first seek services at typical Title X clinics? How many of these clients are 19 or under?
 - What are the marital status, age, and race of the above clients who seek or receive pregnancy counseling?
 - Of the Title X clinic clients who seek or receive pregnancy counseling, how many are referred for abortions?
 - How many clients referred for abortions have had a previous abortion? Please break down by age and marital status.
7. Is there any evidence that clinic counseling is structured or presented to favor abortions over other alternatives?
8. What internal guidance or instructions on abortion referrals have Title X grantees developed and given to their personnel?
9. What training have Title X clinic counselors received regarding problem pregnancy counseling, including abortion referral?
10. What educational materials about abortion are offered by Title X funded clinics?
11. What process typically leads to an abortion referral in Title X funded clinics?
12. Do any substantive differences exist in the proportion of clients referred for abortion or in educational materials used regarding abortion between public and private Title X grantees?
13. Are clients referred for abortion by Title X clinics offered follow-up counseling?
14. What steps have HHS and Title X grantees and clinics taken to implement section 931 (b)(1) of the Omnibus Budget Reconciliation Act of 1981? This section requires Title X grantees and contractors to encourage family participation in project operations.

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EFFECTIVENESS OF
TITLE X PROGRAM

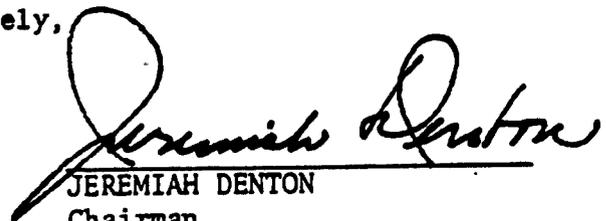
As you know, many claims have been made by Title X program components of the program's effectiveness in preventing unwanted pregnancy. In fact, proponents have recently stated that the Title X program saves over \$2.00 for every \$1.00 spent. Yet, with regard to adolescents, illegitimacy rates, abortion rates, and incidents of premarital sexual activity continue to increase dramatically. There are several ways effectiveness might be gauged. These should include encouraging involvement of parents and other family members when working with adolescents, and supporting local community standards with regard to these issues. We recognize that an in-depth evaluation of the effectiveness of the Title X program could be very costly and time-consuming. However, we would like GAO to determine how the effectiveness of the program could be evaluated, either comprehensively in one study or in phases. Proper attention should be given to the cost-benefit ratio claimed by proponents and to other outcomes of the use of Title X funds with which society must contend. After you have completed such an assessment, we would like to discuss the best approach for conducting the evaluation.

If, during the course of your work, you should need further guidance or information, please contact either Dr. Craig Peery on the Staff of the Labor and Human Resources Committee or the Staff Director of the Aging, Family and Human Services Subcommittee, Miss Cynthia Hilton. Thank you for your cooperation.

Sincerely,



ORRIN G. HATCH
 Chairman
 Committee on Labor
 and Human Resources



JEREMIAH DENTON
 Chairman
 Subcommittee on Aging
 Family and Human Services

JAD:km:ca

Enclosures

ORGANIZATIONS REVIEWED

	<u>Type of recipient</u>	<u>Scope of activities reviewed</u>	
		<u>Abortion-related activities</u>	<u>Lobbying</u>
Region I - Boston, Massachusetts:			
Action for Boston Community Development, Inc.	Grantee	X	
East Boston Neighborhood Health Center	Clinic	X	
Vermont State Department of Health	Grantee	X	
Planned Parenthood Association of Vermont, Inc.	Delegate	X	
Burlington Center	Clinic	X	
Region II - New York, New York:			
Planned Parenthood of New York City, Inc. (note a)	Grantee		
Boro Hall Center, Brooklyn (note a)	Clinic	X	
Genesee Region Family Planning Program, Inc., Rochester, New York	Grantee		X
Planned Parenthood of Rochester and Monroe County, Inc.	Delegate		X
New Jersey Family Planning League, Inc., Mountainside, New Jersey	Grantee		X
Planned Parenthood-Essex County, Newark, New Jersey	Delegate		X
Region III - Philadelphia, Pennsylvania:			
Planned Parenthood Association of Metropolitan Washington, D.C., Inc.	Grantee	X	X
Parklands Clinic, Washington, D.C.	Clinic	X	
State of Maryland Department of Health and Mental Hygiene	Grantee	X	
Baltimore City Health Department	Delegate	X	
Western Center for Maternal and Infant Care, Baltimore, Maryland	Clinic	X	
Region IV - Atlanta, Georgia:			
Kentucky Department for Human Resources	Grantee	X	
Louisville Area Family Planning Council, Inc.	Delegate	X	
Department of Public Health Louisville and Jefferson County	Clinic	X	
University of Louisville, School of Medicine, Department of Obstetrics and Gynecology	Clinic	X	
Planned Parenthood of Louisville, Inc.	Clinic	X	

	<u>Type of recipient</u>	<u>Scope of activities reviewed</u>	
		<u>Abortion-related activities</u>	<u>Lobbying</u>
Region V - Chicago, Illinois:			
Ohio Department of Health	Grantee	X	
Tuscorawas County General Health District	Clinic	X	
Planned Parenthood of South-eastern Ohio, Inc.	Delegate	X	
Athens, Ohio, Clinic	Clinic	X	
Planned Parenthood Association of Cincinnati, Ohio (note b)	Clinic	X	
Planned Parenthood of Central Ohio, Inc., Columbus, Ohio (note b)	Grantee	X	
Region VI - Dallas, Texas:			
Greater Dallas Family Planning Project	Grantee	X	
Maple Plaza Clinic	Clinic	X	
Planned Parenthood Center of San Antonio, Inc.	Grantee	X	
Downtown Clinic	Clinic	X	
Region IX - San Francisco, California:			
Los Angeles Regional Family Planning Council, Inc.	Grantee	X	X
Los Angeles County Department of Health Services	Delegate	X	
Hollywood-Wilshire Health Center	Clinic	X	
Planned Parenthood World Population-Los Angeles (note b)	Delegate		
Sherman Oaks Clinic (note b)	Clinic	X	
Orange County Health Department Human Services Agency, Santa Ana, California	Grantee	X	
East Region Clinic	Clinic	X	
Planned Parenthood Association of Orange County	Delegate	X	
Santa Ana Clinic	Clinic	X	
Planned Parenthood of Santa Barbara, Inc.	Grantee		X

a/Limited review of abortion activities initiated based on previous audit work.

b/Limited review of abortion activities as a followup to an audit by HHS' Inspector General.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

SEP 13 1982

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft of a proposed report "Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,


Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICES'S DRAFT REPORT "RESTRICTIONS ON ABORTION
AND LOBBYING ACTIVITIES IN FAMILY PLANNING PROGRAMS NEED
CLARIFICATION," DATED AUGUST 13, 1982

GAO Recommendation

We recommend that the Secretary establish clear operational guidance by incorporating into the title X program regulations and guidelines, HHS' position on the scope of the restriction in section 1008.

In doing so, we recommend that the Secretary consider the grantee practices discussed in this report and in the Inspector General's reports with a view toward providing as explicit guidance as possible on the activities that are and are not allowed.

Department Comment

The Secretary will direct the Assistant Secretary for Health to include in title X program guidelines an explanation of the Department's position on implementation of section 1008.

GAO Recommendation

Pending revision of Federal cost principles, we recommend that the Secretary provide interim guidance to title X recipients on activities that constitute lobbying and are unallowable as title X program expenditures.

Department Comment

In the near future, HHS expects to issue a notice of proposed rulemaking to define lobbying activities that are unallowable in various HHS programs, including title X. These regulations will provide guidance to title X recipients.

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