February 9, 2015

Office of Policy and Research
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5718
Washington, DC 20210

Attention: OMB Control Number 1210-0150

In a notice published in the *Federal Register* on December 11, 2014, the Department of Labor requested comments pertaining to its collection of information via OMB control number 1210-0150.

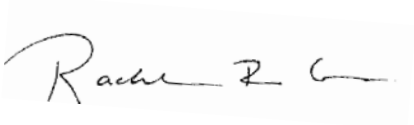
The Guttmacher Institute—a nonprofit organization dedicated to advancing sexual and reproductive health worldwide through research, policy analysis and public education—has previously submitted comments related to that information collection and to related regulations on employer objections to coverage of contraceptive services.

We would like to take this opportunity to remind the Department of those prior comments, which have been attached to this letter. In particular, we refer you to the section on the "Scope of the Objection," in which we urge the Department to provide more guidance to entities about how to identify the subset of contraceptive services to which they object.

We hope you find these comments useful as you interpret and implement the preventive services provision. If you need additional information about the issues raised in this letter, please feel free to contact Adam Sonfield in the Institute's Washington office. He may be reached either by phone at 202-296-4012 or by email at asonfield@guttmacher.org.

Thank you for your consideration.

Sincerely yours,



Rachel Benson Gold
Acting Vice President for Public Policy

October 27, 2014

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attention: CMS-9939-IFC

RE: Interim Final Rules for Coverage of Certain Preventive Services Under the Affordable Care Act.

In a notice published in the *Federal Register* on August 27, 2014 (Vol. 79, No. 166, pp. 51092–51101), the Departments of Health and Human Services (DHHS), Labor, and the Treasury issued interim final rules related to a section of the Patient Protection and Affordable Care Act (ACA) that requires group health plans and health insurance issuers in the group and individual markets to provide benefits, without cost-sharing, for a series of preventive services, including contraceptive services. On behalf of the Guttmacher Institute, a nonprofit organization dedicated to advancing sexual and reproductive health worldwide through research, policy analysis and public education, I am pleased to submit the following comments on the proposed rules.

Under Sec. 2713 of the Public Health Service Act, as established by the ACA, individuals with private health coverage (aside from those in grandfathered plans) have the legal right to coverage of a specified list of preventive health services without cost-sharing. That list includes the full range of contraceptive methods, services and counseling for women. Contraception was included in that list on the recommendation of a panel of the Institute of Medicine, because of its important, well-documented health benefits for women and their families.

As the Guttmacher Institute has indicated previously, we believe the Departments have already gone well beyond what is legally required by providing an exemption to this contraceptive coverage guarantee for houses of worship and an accommodation for other religiously affiliated nonprofit organizations, such as universities, hospitals and social relief agencies. Under that accommodation, employees and their dependents are guaranteed seamless contraceptive coverage without out-of-pocket costs, but that coverage must be provided by the organization's insurance company or third-party administrator. The organization itself does not have to "contract, arrange, pay or refer" for any contraceptive coverage to which it objects on religious grounds. Instead, it must only inform its insurance company or third-party administrator of its objections, using a specific self-certification form (EBSA Form 700).

In an interim order issued on July 3, 2014 in *Wheaton College v. Burwell*, the U.S. Supreme Court stated that the college need not fill out that specific form or send a copy to its insurance company or third-party administrator. Rather, written notice to DHHS would suffice. The government could rely

on that notice to ensure that employees and their dependants still receive comprehensive contraceptive coverage. The Department's interim final rule responds to the Court's order by establishing an alternate notice process for entities with religious objections to coverage of some or all forms of contraception.

The Guttmacher Institute disagrees with the Court that these additional steps are necessary. However, the alternate notice process that the Departments have established does not appear to threaten women's guarantee of contraceptive coverage or impose any burdens on their access to or use of coverage or care, and that is our overriding concern. We do suggest several recommendations to bolster that guarantee and to help ensure that women's rights are fully protected, as detailed below.

Scope of the Objection

In the interim final rules, the Departments have included a list of specific information that an objecting entity must provide to DHHS, and an optional model notice that the entity may choose to use. That list of information includes "an identification of the subset of contraceptive services to which coverage the eligible organization objects."

We urge the Departments to provide more guidance to entities about how to identify that subset of contraceptive services, in order to ensure that the insurance company or third-party administrator that will ultimately be responsible for providing that coverage has a complete and accurate understanding of what specific contraceptive services are at issue.

Specifically, we urge the Departments to require objecting entities to specify which forms of contraception they find objectionable from a set, comprehensive list of methods. The Food and Drug Administration's "Birth Control Guide" would be the obvious choice. It is a comprehensive list of 20 contraceptive methods available in the U.S. marketplace that has been cited frequently in the litigation over the federal contraceptive coverage guarantee. The fact sheet can be found here: http://www.fda.gov/downloads/ForConsumers/ByAudience/For%E2%80%A8Women/FreePublications/UCM356451.pdf

This requirement should help prevent DHHS from receiving notice of objections that are unclear and difficult to interpret. For example, an entity might otherwise object to "abortifacients" without identifying what the entity means by that. (No method of contraception is in fact an abortifacient, although many objecting entities have claimed otherwise.) It cannot be up to the Departments or to an entity's insurance company or third-party administrator to make those sorts of interpretations about an entity's religious beliefs.

Consumer Protections

The alternate notice process created in the interim final rules relies on multiple federal agencies to receive information from objecting entities and transmit information to insurance companies and third-party administrators. This highlights the need for the Departments to designate a central oversight and enforcement entity and to lay out explicit processes to monitor, enforce and encourage compliance.

Among other responsibilities, this central entity could act as an ombudsman for consumers. When an employer objects to coverage of contraception and that coverage is instead provided directly by an insurance company or arranged by a third-party administrator, employees and dependants cannot rely on the company's human resources department for assistance with that coverage. To fill that vacuum and to help consumers more broadly, a federal ombudsman could provide information and support and handle consumer complaints—either directly or by directing the complaints to the appropriate state or federal agency—when insurers, providers or pharmacies do not adhere to the law and consumers are inappropriately denied access to or required to absorb some of the cost of protected services and supplies.

The Departments should require that plan documents provided by the insurance company or third-party administrator include a toll-free telephone number, e-mail address and/or website through which the ombudsman could be contacted. That contact information should also be available and easy to locate on federal websites for consumers more generally.

A central enforcement entity could also encourage compliance by providing technical assistance and education to state agencies, health plans, health care providers, pharmacies and the general public.

Transparency

The alternate notice process established in the interim final rules also provides an opportunity and additional reason for the Departments to improve transparency about which entities take advantage of the accommodation.

Specifically, we urge the Departments to track which entities have notified DHHS directly about their religious objections to covering some or all methods of contraception, in accordance with the alternate notice process.

Further, we recommend that the Departments require notice to DHHS under the original process established by the July 2013 regulations. Under that process, objecting entities provide notice of their objections to their insurance company or third-party administrator. The Departments should require insurance companies and third-party administrators to report to DHHS any such notices they have received. Such a requirement would pose no new obligations on the objecting entity itself.

Together, these two notice requirements would provide a comprehensive accounting of all entities that have taken advantage of the accommodation. That would enable the Departments to provide appropriate oversight and enforcement to ensure that the accommodation is working as intended.

In addition, the Departments should make public its records about which entities have taken advantage of the accommodation. That would provide important information to the current and potential employees of objecting employers. It would also enable lawmakers, the courts, the media and the public to gauge whether this arrangement is working as intended.

We hope you find these comments useful as you interpret and implement the preventive services provision. If you need additional information about the issues raised in this letter, please feel free to contact Adam Sonfield in the Institute's Washington office. He may be reached either by phone at 202-296-4012 or by email at asonfield@guttmacher.org.

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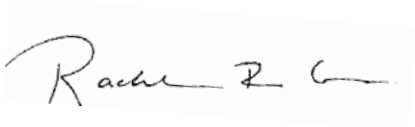

Rachel Benson Gold
Acting Vice President for Public Policy