

VIA POST, EMAIL, AND FAX

November 17, 2008

Hon. Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
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Dear Ms. Dudley:

The undersigned groups committed to women's health are writing to urge OIRA to take its responsibilities seriously with respect to the Department of Health and Human Services' (HHS) "Provider Conscience Regulation" (RIN 0991-AB48, 73 Fed. Reg. 50274 (Aug. 26, 2008) (to be codified at 45 C.F.R. pt. 88).

As you are well-aware, on May 9, 2008, White House Chief of Staff Joshua Bolten issued a directive for agencies to submit all proposed regulations they wish to finalize before the end of the Bush Administration by June 1, 2008, except in "extraordinary circumstances." Mr. Bolten's directive explicitly sought to "resist the historical tendency of administrations to increase regulatory activity in their final months." The purpose of the deadline was to ensure that agencies did not engage in ill-conceived rulemakings prior to a change of administration.

Yet this is exactly what HHS is doing with the Provider Conscience regulation. These regulations, which relate to statutes that have been on the books for years (in one case, since the 1970's) were not proposed until late August 2008. Moreover, HHS has put the rule on the fast track with a shortened 30-day public comment period and no public hearing.

This unjustified last minute regulatory rush, in clear contravention of the Bolten directive, was drawn to your attention by the Institute for Policy Integrity (IPI). In its letter dated September 5, 2008, IPI requested that you enforce Mr. Bolten's directive by either explaining the "extraordinary circumstances" that require the issuance the Provider Conscience regulation, or preventing the promulgation of this eleventh-hour regulation. Your response to that request, dated October 9, 2008, suggested that the Provider Conscience regulation is a "circumstance[]" in which it would be appropriate for individual regulations to proceed without regard to deadlines if approved by OIRA, working closely with the heads of the President's policy councils."

You have failed entirely to explain how the Provider Conscience regulation meets the "extraordinary circumstances" standard laid out in the Bolton Memorandum. If OIRA believes

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that extraordinary circumstances exist for this proposed regulation and plans to allow HHS to proceed with finalizing these regulations before the end of the Administration, we believe that OIRA owes the American public a clear explanation of the extraordinary circumstances that justify allowing this to happen. We request that OIRA provide that explanation as soon as possible.

As demonstrated in the thousands of comments that HHS received in response to the proposed rule, this ill-conceived, last-minute regulation could have a dramatic negative effect on the delivery of basic healthcare to women. OIRA should take its responsibilities seriously and not allow HHS to engage in ill-conceived, last-minute rulemaking – under the endorsement of OIRA.

Furthermore, we request that OIRA and OMB require HHS to undertake a more formal accounting of the costs and benefits of the proposed Provider Conscience regulation. As IPI's September 5 letter explained, the analysis performed by HHS was cursory and wholly inadequate. That cost-benefit analysis does not even attempt to address the real cost of the regulation for women, especially low-income women, whose access to basic reproductive health services, including contraception, as well as information about those services, may be limited as a result of the regulation.

We hope that you will give this vital matter your prompt attention.

Sincerely,



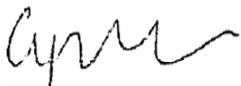
Laurie Rubiner

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cc: Hon. Jim Nussle
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