

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION )  
OF MAINE D/B/A MAINE FAMILY )  
PLANNING *et al.*, )  
 )  
Plaintiffs, )  
v. )  
 )  
UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 1:19-cv-00100-LEW

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF SUMMARY JUDGMENT MOTION**

Pursuant to Local Rule 56(c), Defendants submit the following response to Plaintiffs’ Statement of Undisputed Material Facts in Support of Plaintiffs’ Motion for Summary Judgment (ECF No. 114).

Defendants object generally to Plaintiffs’ reliance on their own characterization of the Final Rule at issue in this litigation, *see* 84 Fed. Reg. 7714 (Mar. 4, 2019) (Rule), documents in the administrative record and other public documents, and the declarations Plaintiffs have submitted to the extent those characterizations differ from the text of the documents themselves or omit contextual information that is necessary to understand those characterizations. The Court should refer to the documents cited by the parties for a true and accurate statement of their contents.

Defendants further object generally to reliance on Plaintiffs’ Statement of Undisputed Material Facts to resolve the legal questions presented in this case, and to the Court’s consideration of any materials outside of the Administrative Record. Because this case challenges federal agency action and arises under the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*, “the traditional Rule 56 standard does not apply,” *Bennett v. Murphy*, 166 F. Supp. 3d 128, 139 (D.

Mass. 2016), and the Court reviews the challenged agency action “not to determine whether a dispute of fact remains but, rather, to determine whether the agency action” was consistent with the APA standard of review. *Boston Redevelopment Auth. v. Nat’l Park Serv.*, 838 F.3d 42, 47 (1st Cir. 2016); *see also James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1096 (D.C. Cir. 1996) (“[D]istrict courts reviewing agency action under the [APA] do not resolve factual issues, but operate instead as appellate courts resolving legal questions.”). Moreover, as Defendants explain in their simultaneously filed summary judgment opposition and reply brief, this standard applies to constitutional challenges to agency action. *See, e.g.*, 5. U.S.C. § 706 (challenges to agency action as “contrary to constitutional right” shall be evaluated on a “review [of] the whole record”); *Harvard Pilgrim Health Care v. Thompson*, 318 F. Supp. 2d 1, 10 (D.R.I. 2004).

Defendants respectfully submit that in light of this standard of review and the Supreme Court’s decision in *Rust v. Sullivan*, 500 U.S. 173 (1991), Plaintiffs’ statement, which is neither “short” nor “concise,” *see* Local Rule 56(b), generally does not assert facts that are material to the outcome of this case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).

Subject to these general objections, Defendants respond to the numbered paragraphs in Plaintiffs’ statement as follows.

1. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any

portion of the Administrative Record filed with this Court. *See Olsen v. United States*, 414 F.3d 144, 155 (1st Cir. 2005) (“The Supreme Court has consistently stated that review of administrative decisions is ‘ordinarily limited to consideration of the decision of the agency . . . and of the evidence on which it was based[.]’ . . . ‘[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.’”).

2. Admitted.

3. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

4. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

5. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

6. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies on solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

7. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

8. Qualified. Defendants admit that MFP received Title X grant funding in Fiscal Year 2018 and that on September 1, 2018, it was awarded Title X funds for the grant cycle ending March 31, 2019.

9. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

10. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

11. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

12. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

13. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

14. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

15. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*,

477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

16. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

17. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

18. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

19. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

20. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

21. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion regarding the estimates of "[o]ne study." However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

22. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. This case is to be decided on the agency's Administrative Record, not the opinions of "Plaintiffs' Experts." *See Olsen*, 414 F.3d at 155.

23. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. This case is to be decided on the agency's Administrative Record, not the opinions of "Plaintiffs' Experts." *See Olsen*, 414 F.3d at 155.

24. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth

uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. This case is to be decided on the agency’s Administrative Record, not the opinions of “Plaintiffs’ Experts.” *See Olsen*, 414 F.3d at 155.

25. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited authorities, but deny the assertions in this paragraph to the extent they provide an incomplete characterization of the Title X program. Defendants respectfully refer the Court to the statutory text itself, including the Family Planning Services and Population Research Act cited in Plaintiffs’ footnote 46, for a complete and accurate statement of the contents of the statute. To the extent Plaintiffs attempt to characterize Congress’s “goal” in creating Title X, this is a characterization of congressional intent, and Defendants dispute that the question of congressional intent is a question of fact appropriate for a statement of material facts.

26. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete characterization of the Title X program. Defendants respectfully refer the Court to the statutory text itself, including the Family Planning Services and Population Research Act cited in Plaintiffs’ footnote 50, for a complete and accurate statement of the contents of the statute. To the extent Plaintiffs’ attempt to characterize the “core of Title X’s mission,” this is a characterization of congressional intent, and Defendants dispute that the question of congressional intent is a question of fact appropriate for a statement of material facts.

27. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the

assertions in this paragraph to the extent they provide an incomplete characterization of Title X's operation. Defendants respectfully refer the Court to the Rule, the Title X statute and regulations, and the cited Centers for Disease Control and Prevention (CDC) report for a complete and accurate statement of their contents. Defendants further dispute that the assertions in this paragraph are "undisputed, material facts" to the extent they rely on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

28. Admitted that the statistics Plaintiffs provide are accurate. Defendants respectfully refer the Court to the CDC report on which Plaintiffs rely for a complete and accurate statement of its contents, and aver that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248.

29. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the assertions in this paragraph are accurate, but aver that the proper citation for the proposition in the first sentence is to 42 C.F.R. § 59.7(e).

30. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Congressional Research Service Report (CRS Report) cited in Plaintiffs' footnote 60, but deny the assertions in this paragraph to the extent they provide an incomplete description of HHS's review of compliance by Title X grantees. Defendants respectfully refer to the Court to the CRS Report for a complete and accurate statement of its contents. Defendants further dispute that the assertions in this paragraph are "undisputed, material

facts” to the extent they rely on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

31. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

32. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

33. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion regarding the estimates of one study. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’ declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

34. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion regarding the estimates of “[o]ne study.” However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs’

declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

35. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete characterization of the historical development of HHS's interpretation of Section 1008 of the Public Health Service Act (PHSA). Defendants respectfully refer the Court to the authorities cited in Plaintiffs' footnotes 68 and 69 for a complete and accurate statement of the authorities from which Plaintiffs selectively quote, and to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment at 3-8, ECF No. 111, for a description of HHS's "position," as it is relevant to this case, with respect to the "provision of information about abortion."

36. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the historical development of HHS's interpretation of Section 1008 of the PHSA. Defendants respectfully refer the Court to HHS's 2000 Title X Rule, 65 Fed. Reg. 41,270 (July 3, 2000), for a complete and accurate statement of the document that Plaintiffs characterize in this paragraph.

37. Denied. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants dispute that "nondirective counseling" is "commonly understood in medicine" to have the meaning Plaintiffs ascribe to it in this paragraph. Plaintiffs cite only to the individual views of two of their declarants, which Defendants submit is insufficient to establish a common understanding in medicine, and not any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

Moreover, to the extent Plaintiffs seek to establish the meaning of the term “nondirective counseling,” as it is used by Congress in the appropriations rider on which Plaintiffs base one of their claims, that is a legal question, not a question of fact appropriate for a statement of material facts.

38. Qualified. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of HHS’s 1988 Title X Rule, *see* 53 Fed. Reg. 2922 (Feb. 2, 1988), and the Supreme Court’s decision in *Rust v. Sullivan*, 500 U.S. 173 (1991). Defendants respectfully refer the Court to those authorities for a complete and accurate statement of their contents.

39. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. This paragraph consists solely of Plaintiffs’ characterization of a federal court decision, *National Family Planning and Reproductive Health Association, Inc. v. Sullivan*, 979 F.2d 227 (D.C. Cir. 1992), not uncontroverted facts that are material to the outcome of this suit under the APA, *see Anderson*, 477 U.S. at 248. Defendants respectfully refer the Court to that decision for a complete and accurate statement of its contents, and to the authorities cited therein for a complete and accurate statement of what “President George H.W. Bush directed HHS” to do in November 1991, and what the guidelines “then issued by HHS permitted.”

40. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete characterization of the vetoed legislation they describe, and respectfully refer the Court to the vetoed Family Planning Amendments Act of 1992 (FPAA) for a complete and accurate statement of its contents and what

it “would have required.” Defendants dispute that the language in the FPAA is “similar” to the language in the appropriations bill that Plaintiffs cite. *Compare, e.g.*, HHS Appropriations Act 2019, Pub. L. No. 115-245, Div. B, 132 Stat. 2981, 3071, *with* S.323, 102nd Cong. (1991). To the extent Plaintiffs’ attempt to ascribe particular motivations or intentions to Congress or individual members of Congress, Defendants dispute that the question of congressional intent is a question of fact appropriate for a statement of material facts.

41. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the statements of various members of Congress while debating the vetoed FPAA, but dispute that the question of congressional intent is a question of fact appropriate for a statement of material facts. Defendants respectfully refer the Court to the cited statements for a complete and accurate statement of their contents.

42. Admitted.

43. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide Plaintiffs’ incomplete and selective characterization of the portion of the Federal Register cited in Plaintiffs’ footnotes 87 and 88, and respectfully refer the Court to the cited document for a complete and accurate statement of its contents.

44. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from HHS’s 2000 Title X Rule, but deny the assertions in this paragraph to the extent they provide Plaintiffs’ incomplete and selective characterization of that rule.

Defendants respectfully refer the Court to the 2000 Title X Rule for a complete and accurate statement of its contents.

45. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that HHS issued a report dated April 25, 2014 that was entitled “Providing Quality Family Planning Services,” and that “provide[d] recommendations” about “how to provide quality family planning services.” Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of that report, which is not a regulation and only applies to the extent it is consistent with currently effective regulations governing the Title X program. Defendants respectfully refer the Court to the full report, cited in Plaintiffs’ footnote 91, for a complete and accurate statement of its contents.

46. Admitted. Defendants respectfully refer the Court to the cited statutory provision, 42 U.S.C. § 18114, for a complete and accurate statement of its contents.

47. Qualified. Defendants admit that HHS issued a notice of proposed rulemaking addressing the Title X program on June 1, 2018. *See* 83 Fed. Reg. 25,502 (June 1, 2018) (NPRM). The remainder of this paragraph consists of Plaintiffs’ characterization of the proposals in the NPRM, and Defendants deny Plaintiffs’ assertions to the extent they provide a selective and incomplete characterization of the NPRM. Defendants respectfully refer the Court to the NPRM itself for a complete and accurate statement of its contents.

48. Admitted.

49. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the organizations to which Plaintiffs refer submitted comments in response to the NPRM, but deny

the assertions in this paragraph to the extent they provide Plaintiffs' selective and incomplete characterization of the public comments. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents.

50. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the organizations to which Plaintiffs refer submitted comments in response to the NPRM, but deny the assertions in this paragraph to the extent they provide Plaintiffs' selective and incomplete characterization of the public comments. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents.

51. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide Plaintiffs' selective and incomplete characterization of the Administrative Record and a transcript from a hearing that Plaintiffs submitted in support of their summary judgment motion. Defendants respectfully refer the Court to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM, and to the transcript cited in Plaintiffs' footnote 97 for a complete and accurate statement of its contents.

52. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that members of the United States Congress and "members of . . . states" submitted comments in response to the NPRM, but deny the assertions in this paragraph to the extent they provide Plaintiffs' selective and incomplete characterization of the public comments. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their

contents, and to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM.

53. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that some commenters submitted comments opposing certain aspects of the NPRM, but deny this paragraph to the extent it provides an incomplete characterization of the comments that were submitted in response to the NPRM, many of which supported the proposals set forth in the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents, and to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM.

54. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that some commenters submitted comments opposing certain aspects of the NPRM, but deny this paragraph to the extent it provides an incomplete characterization of the comments that were submitted in response to the NPRM, many of which supported the proposals set forth in the NPRM. Defendants further deny this paragraph to the extent it suggests that any commenter argued that the regulations proposed in the NPRM were “prohibited by Section 1554” of the ACA. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents, and to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM.

55. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that some commenters submitted comments opposing certain aspects of the NPRM, but deny this

paragraph to the extent it provides an incomplete characterization of the comments that were submitted in response to the NPRM, many of which supported the proposals set forth in the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents, and to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM.

56. Qualified. Defendants admit that the Department published the Rule at issue in this litigation on March 4, 2019, and deny the assertions in this paragraph to the extent they provide an incomplete characterization of that Rule. Defendants respectfully refer the Court to the Rule for a complete and accurate statement of its contents.

57. Qualified. As of March 4, 2020, all of the provisions of the Rule, including the physical separation requirements, are in effect everywhere except the State of Maryland, where the Rule has been enjoined. *See California v. Azar*, 950 F.3d 1067 (9th Cir. 2020); *Mayor & City Council of Baltimore v. Azar*, No. 19-cv-1103, ---F. Supp.3d---, 2020 WL 758145 (D. Md. Feb. 14, 2020).

58. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

59. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent

they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

60. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule, and respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

61. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

62. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Rule prohibits Title X providers from (1) referring patients for abortion as a method of family planning, or (2) using the "provision of any prenatal, social service, emergency medical, or other referral, of any counseling, or of any providers lists, as an indirect means of encouraging or promoting abortion as a method of family planning." 42 C.F.R. §§ 59.14(a), (c). Defendants

respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, and deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

63. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Rule prohibits Title X providers from (1) referring patients for abortion as a method of family planning, or (2) use the "provision of any prenatal, social service, emergency medical, or other referral, of any counseling, or of any providers lists, as an indirect means of encouraging or promoting abortion as a method of family planning." 42 C.F.R. §§ 59.14(a), (c). Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, and deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

64. Qualified. Defendants admit that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, Plaintiffs rely solely on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record, and Defendants aver that this paragraph does not set forth

uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248; *Olsen*, 414 F.3d at 155.

65. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Rule provides that “once a client served by a Title X project is medically verified as pregnant, she shall be referred to a health care provider for medically necessary prenatal health care.” 42 C.F.R. § 59.14(b). Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents as well as HHS’s basis for including the prenatal care referral requirement, and deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants further dispute this paragraph’s inclusion as an “undisputed, material fact” to the extent it relies on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

66. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule and its provisions regarding “nondirective counseling.” For example, the Rule states that nondirective counseling involves “presenting the options in a factual, objective, and unbiased manner and (consistent with other Title X requirements and restrictions) offering factual resources that are objective, rather than presenting the options in a subjective or coercive manner.” 84 Fed. Reg. at 7747. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

67. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Rule requires any nondirective pregnancy counseling that is offered to be provided by physicians or advanced practice providers, 42 C.F.R. § 59.14(b)(i), and that the Rule provides that “once a client served by a Title X project is medically verified as pregnant, she shall be referred to a health care provider for medically necessary prenatal health care,” *id.* § 59.14(b). Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, and deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule.

68. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

69. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph’s inclusion as an “undisputed, material fact” to the extent it relies on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

70. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including what considerations HHS did and did not address in the rulemaking and the agency’s basis for doing so. Defendants further dispute this paragraph’s inclusion as an “undisputed, material fact” to the extent it relies on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

71. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants further deny that the Rule, as a condition on the receipt of federal funds, “bans” any speech. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

72. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

73. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that

Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

74. Admitted that Plaintiffs accurately quote from the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

75. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

76. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's full justification for promulgating the physical separation requirement.

77. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the government monitors Title X providers to ensure that federal funds are not used for prohibited activities, but deny the assertions in this paragraph to the extent they provide an incomplete

description of HHS's review of compliance by Title X grantees. Defendants respectfully refer the Court to the CRS Report from which Plaintiffs quote, cited in Plaintiffs' footnote 170, for a complete and accurate statement of its contents.

78. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's full justification for promulgating the physical separation requirement.

79. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's full justification for promulgating the physical separation requirement.

80. Qualified. Defendants admit that Plaintiffs accurately characterize HHS's estimates regarding the cost of compliance with the physical separation requirement, but deny that the Rule "does not provide evidence in support of those estimates." Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, and in particular to 84 Fed. Reg. at 7781-82 for a complete statement of HHS's explanation for its estimates regarding the costs of compliance with the physical separation requirement.

81. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that

some commenters submitted comments objecting to HHS's cost estimates in the NPRM, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

82. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that some commenters submitted comments addressing the impact that they predicted the NPRM would have on patients, but deny that the Rule "did not address impacts that the physical separation requirements will have on patients." For example, HHS considered comments speculating that the physical separation requirement "would destabilize the network of Title X providers" and concluded that the Rule would "contribute to more clients being served, gaps in service being closed, and improved client care." 84 Fed. Reg. at 7766; *see also id.* at 7780-82. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement

of its contents and HHS's response to comments. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

83. Denied. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments, including, for example, 84 Fed. Reg. at 7766, 7780-82, for HHS's response to comments that the Rule would drive providers out of the Title X program.

84. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

85. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Insofar as Plaintiffs are referring to the Institute for Policy Integrity comment cited in paragraph 84 and footnote 184, Defendants admit that the Plaintiffs accurately attribute the cited proposition to the comment, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants

respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

86. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

87. Denied. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents and HHS's justification of the abortion counseling and referral provisions, including, for example, 84 Fed. Reg. at 7723, where HHS explained why it expected "positive outcomes" for patients, including because "new providers who previously were unable to participate in Title X projects due to conscience concerns with the 2000 regulations will be free to apply for a Title X grant or to participate in a Title X project."

88. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent

they provide an incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's full justification for promulgating the counseling and referral requirements.

89. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote HHS's conclusion that the Rule "adequately accommodates medical professionals and their ethical obligations," and that some commenters objected to that conclusion, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

90. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

91. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that

Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comment for a complete and accurate statement of its contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

92. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comment for a complete and accurate statement of its contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

93. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comment for a complete and accurate statement of its contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

94. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited code of ethics, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the code of ethics. Defendants respectfully refer the Court to the cited code of ethics for a complete and accurate statement of its contents.

95. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from and characterize the cited authorities but deny the assertions in this paragraph to the extent they provide Plaintiffs' selective characterization of those authorities. Defendants respectfully refer the Court to the cite authorities for a complete and accurate statement of their contents.

96. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the cited comment and code of ethics, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of those authorities and the effect of the Rule. Defendants respectfully refer the Court to the cited authorities for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS's response to comments.

97. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that

Plaintiffs accurately quote from the cited code of ethics, but deny the assertions to the extent they provide Plaintiffs' incomplete and selective characterization of the code of ethics. Defendants respectfully refer the Court to the cited code of ethics for a complete and accurate statement of its contents.

98. Denied. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents and HHS's justification of the counseling and referral provisions and response to comments, including, for example, 84 Fed. Reg. at 7724, 7748, where HHS explained why it did not agree with commenters' concerns that the Rule would conflict with medical ethics.

99. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the HHS report dated April 25, 2014 and entitled "Providing Quality Family Planning Services, which "provides recommendations" about "how to provide quality family planning services," but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the report. Defendants respectfully refer the Court to the full report, cited in Plaintiffs' footnote 207, for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

100. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that "[i]n general, medical ethics obligations require the medical professional to share full and accurate

information with the patient, in response to her specific medical condition and circumstance,” 84 Fed. Reg. at 7724, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of “the comments detailed *supra* in paragraphs 87-99.” Defendants respectfully refer the Court to the comments cited in those paragraphs for a complete and accurate statement of their contents, and to paragraphs 87-99, *supra*, for Defendants’ specific response to each of the paragraphs Plaintiffs reference. Defendants further dispute this paragraph’s inclusion as an “undisputed, material fact” to the extent it relies on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

101. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Rule does not allow Title X providers to refer patients for abortion as a method of family planning, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the Rule. For example, the Rule authorizes Title X providers to offer “nondirective pregnancy counseling, which may discuss abortion.” 42 C.F.R. § 59.14(e)(5). Defendants further dispute this paragraph’s inclusion as an “undisputed, material fact” to the extent it relies on declarations submitted in support of Plaintiffs’ summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155. And to the extent Plaintiffs seek to establish the meaning of the term “nondirective counseling,” as it is used by Congress in the appropriations rider on which Plaintiffs base one of their claims, that is a legal question, not a question of fact appropriate for a statement of material facts.

102. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth

uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

103. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions to the extent they provide an incomplete and selective characterization of the Rule and the effect that Plaintiffs' declarants surmise it would have on the "patient-provider relationship." Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including, for example, 84 Fed. Reg. at 7724, where HHS explained that the Rule allows physicians and advanced practice providers "the ability to discuss the risks and side effects of each option" presented to a pregnant patient, "permits the patient to ask questions and to have those questions answered by a medical professional," and within statutory limits, requires referrals "for medical emergencies and for conditions for which non-Title X care is medically necessary for the health and safety of the mother or child." Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

104. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

105. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiff accurately quote from the Rule and selected comments submitted in response to the NPRM, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of those comments and the Rule. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, HHS's justifications for the Rule, and HHS's response to comments.

106. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the effect of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

107. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the effect of the Rule. Defendants respectfully refer

the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

108. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the effect of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents. Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

109. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the Rule or suggest that HHS "assumed" a certain result without engaging in reasoned decisionmaking. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's basis for making the predictions that it did regarding the future provision of Title X services.

110. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that

some Title X recipients threatened, through comments, to exit the Title X program if the Rule went into effect, but deny that this constitutes “evidence that there would be significant reductions in services as a result of the Rule.” As HHS explained, it also expected “new applicants” to “apply to serve unserved or underserved population areas,” “new providers” previously deterred due to conscience concerns with the 2000 regulations to participate, and other existing providers to expand their services. 84 Fed. Reg. at 7723; *see also id.* at 7744, 7764, 7766, 7780-83. Defendants deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents and HHS’s response to comments.

111. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains comments making the predictions Plaintiffs describe, but deny the assertions in this paragraph to the extent they provide Plaintiffs’ incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS’s weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

112. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains comments making the predictions Plaintiffs describe but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS's weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

113. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains comments making the predictions Plaintiffs describe, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS's weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

114. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains comments making the predictions Plaintiffs describe, but deny

the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS's weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

115. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains a comment making the predictions Plaintiffs describe, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS's weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

116. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents, including HHS's basis for disagreeing with commenters' contentions that the Rule would lead to

a reduction in Title X services, basis for predicting that gaps would be filled by new providers entering the program and existing providers expanding services, and assessment of the relevant costs and benefits.

117. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately quote from the Rule, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the Rule. Defendants respectfully refer the Court to the Rule itself for a complete and accurate statement of its contents.

118. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that the Administrative Record contains a comment making the predictions Plaintiffs describe, but deny the assertions in this paragraph to the extent they provide Plaintiffs' incomplete and selective characterization of the comments that were submitted in response to the NPRM. Defendants respectfully refer the Court to the cited comments for a complete and accurate statement of their contents; to the Administrative Record for a complete and accurate statement of the comments submitted in response to the NPRM; and to the Rule itself for a complete and accurate statement of its contents, including HHS's weighing of the evidence, consideration of factors, response to significant comments, and basis for reaching the conclusions that it did.

119. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

120. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

121. Admitted that Plaintiffs accurately characterize the report cited in Plaintiffs' footnote 254. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

122. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, to the extent it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court, Defendants dispute its inclusion as an "undisputed, material" fact. *See Olsen*, 414 F.3d at 155.

123. Qualified. Defendants admit that some commenters predicted that the Rule would have various negative outcomes, but deny that the "data note" from the Kaiser Family Foundation on which Plaintiffs rely is sufficient to establish that every prediction every commenter made "regarding loss of access to Title X services ha[s] already been borne out." Defendants respectfully refer the Court to HHS's September 30, 2019 supplemental grant award, which the agency "expects . . . will enable grantees to come close to—if not exceed—prior Title X patient coverage."

*HHS Issues Supplemental Grant Award to Title X Recipients* (Sept. 30, 2019).<sup>1</sup> To the extent this paragraph generally relies on events that post-date the Rule, Defendants aver that Plaintiffs do not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248; *Olsen*, 414 F.3d at 155.

124. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

125. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

126. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

127. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth

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<sup>1</sup>See <https://www.hhs.gov/about/news/2019/09/30/hhs-issues-supplemental-grant-awards-to-title-x-recipients.html>.

uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

128. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

129. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

130. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

131. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

132. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

133. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

134. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

135. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

136. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*,

477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

137. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

138. Admitted that Plaintiffs accurately characterize declarations that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

139. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

140. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs' accurately characterize declarations that they submitted in support of their summary judgment motion, but deny the assertions in this paragraph to the extent they provide an incomplete and selective characterization of "HHS's instructions." For example, Defendants clarify that the funding announcement pursuant to which MFP applied for a Title X grant made clear that all of

the applicant's activities "must be in compliance with requirements of the Title X statute, any legislative mandates, and any program regulations, as of the time the requirement is applicable and in effect." *See* HHS, Announcement of Availability of Funds for Title X Family Planning Services Grants at 4 (Jan. 11, 2019)<sup>2</sup> (2019 Announcement). Defendants further dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

141. Qualified. MFP was awarded a three-year grant that provided for \$1,800,000 for year one, but funding for subsequent years was conditioned on availability of funds and project performance. *See* 2019 Announcement at 16.

142. Admitted.

143. Qualified. This paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Defendants admit that Plaintiffs accurately characterize the letter described in this paragraph, and respectfully refer the Court to the cited declaration for a complete and accurate statement of its contents. Defendants dispute this paragraph's inclusion as an "undisputed, material fact" to the extent it relies on declarations submitted in support of Plaintiffs' summary judgment motion rather than any portion of the Administrative Record. *See Olsen*, 414 F.3d at 155.

144. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*,

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<sup>2</sup> PDF available at <https://www.grantsolutions.gov/gs/preaward/previewPublicAnnouncement.do?id=63094>.

477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

145. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

146. Admitted that Plaintiffs accurately characterize a declaration that they submitted in support of their summary judgment motion. However, this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit under the APA. *See Anderson*, 477 U.S. at 248. Additionally, it relies solely on Plaintiffs' declarations and does not cite to any portion of the Administrative Record filed with this Court. *See Olsen*, 414 F.3d at 155.

Dated: April 30, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

MICHELLE R. BENNETT  
Assistant Branch Director

*/s/ R. Charlie Merritt*  
R. CHARLIE MERRITT (VA Bar No. 89400)  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
919 East Main Street, Suite 1900  
Richmond, VA 23219  
Telephone: (202) 616-8098  
robert.c.merritt@usdoj.gov

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2020, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

*/s/ R. Charlie Merritt*  
R. CHARLIE MERRITT