

March 19, 2024

Kevin E. Bryant,  
Deputy Director, Office of Directives Management  
U.S. Department of State  
2201 C St., NW  
Washington, DC 20520

*Submitted via regulations.gov*

**RE: Comment on Department of State Notice of Proposed Rulemaking on Nondiscrimination in Foreign Assistance (RIN 1400-AF66)**

The Center for Reproductive Rights respectfully submits the following comment on the Notice of Proposed Rulemaking issued by the Department of State (the “Department”) to implement the Department’s Notice of Proposed Rulemaking on Nondiscrimination in Foreign Assistance (the “Proposed Rule”).<sup>1</sup>

Since 1992, the Center for Reproductive Rights has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 26 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States (“U.S.”), Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetric care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every person is free to decide whether or when to have children and whether or when to get married; where access to quality reproductive health care is guaranteed; and where everyone can make these decisions free from coercion or discrimination.

Like other marginalized groups, LGBTQI+ people around the world are often subjected to discrimination, violence, and various other forms of stigma simply for being who they are, including through the imposition of legal consequences. For example, sixty-three countries currently criminalize consensual same-sex relations between adults—with penalties including fines, incarceration, and even death in twelve jurisdictions.<sup>2</sup> According to the recent LGBTQI+ Inclusive Development Policy issued by the United States Agency for International Development (“USAID”), criminalization statutes and social taboos frequently result in increased obstacles to accessing basic services, including education, employment, and health care.<sup>3</sup> Stigma against LGBTQI+ people can also manifest in efforts to subject individuals to “conversion therapy” seeking to change (and often specifically to “correct”) their sexual orientation and gender identity.<sup>4</sup> Indeed, an investigation by openDemocracy found that in Kenya, Tanzania, and Uganda, twelve health centers—including those target gay men for health services—had staff that offered their clients help to “quit” their same-sex attraction.<sup>5</sup> While the U.S. Government has

---

<sup>1</sup> Nondiscrimination in Foreign Assistance, 89 Fed. Reg. 3583 (Jan. 19, 2024) (to be codified at 2 C.F.R. § 602) [hereinafter “Proposed Rule”].

<sup>2</sup> LEGAL FRAMEWORKS | CRIMINALISATION OF CONSENSUAL SAME-SEX SEXUAL ACTS, ILGA WORLD DATABASE (LAST VISITED MAR 14, 2024) <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>

<sup>3</sup> USAID, LGBTQI+ Inclusive Development Policy 7 (2023), [https://www.usaid.gov/sites/default/files/2023-07/USAID\\_LGBTQI-Inclusive-Development-Policy\\_August-2023\\_1.pdf](https://www.usaid.gov/sites/default/files/2023-07/USAID_LGBTQI-Inclusive-Development-Policy_August-2023_1.pdf).

<sup>4</sup> See Human Rights Campaign Found., *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy> (last visited Sept. 05, 2023).

<sup>5</sup> Lydia Namubiru et al., *Hospitals Across East Africa Offer Controversial Anti-Gay Counselling*, OPENDEMOCRACY (July 2, 2021), <https://www.opendemocracy.net/en/5050/hospitals-east-africa-controversial-anti-gay-counselling>.

stated that no U.S. funds were provided directly to the hospitals that were implicated in this report,<sup>6</sup> the investigation underscores the broader and pressing need for comprehensive non-discrimination standards, including those being proposed here by the Department.

We support and commend the Department's proposal to enforce non-discrimination protections, which include protections against discrimination on the basis of “race, ethnicity, color, religion, sex, sexual orientation, gender, gender identity or gender expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital status, parental status, political affiliation, or veteran's status” across all grants and cooperative agreements funded by U.S. foreign assistance.<sup>7</sup> These measures are essential for ensuring equitable access to services, programs, and employment for LGBTQI+ and marginalized communities globally.

Notably, not every country interprets their non-discrimination laws consistent with the U.S. definition. Specifically, other countries rarely consider people living with HIV as being protected under disability non-discrimination requirements as U.S. law does.<sup>8</sup> To ensure these much-needed protections are implemented consistently with how agencies like the Department would interpret them here in the U.S., we strongly encourage the Department to include “health status” as a separate protected basis under the Proposed Rule. It is crucial that non-discrimination requirements are broadened to encompass diverse identities and circumstances, including health status, to align with U.S. interpretations and safeguard against discrimination.

Additionally, while acknowledging the need for mechanisms allowing waivers under certain circumstances, we emphasize the necessity for clear guidelines to prevent abuse and ensure consistency in review processes across grants. Recognizing potential challenges for foreign recipients of U.S. assistance, we advocate for leveraging existing frameworks, such as USAID's Branding and Marking Policy, to inform the Department's approach in addressing waiver requests.<sup>9</sup> Drawing from established principles will enhance clarity and effectiveness in navigating complex situations while upholding the integrity of non-discrimination requirements. Consequently, we recommend integrating these guiding principles into the final rule to ensure waivers are granted judiciously and in alignment with the overarching goals of U.S. foreign assistance.

Too often, LGBTQI+ people around the world are unable to access programs, including those funded by U.S. foreign assistance, due to discrimination, stigma, and violence. Robust non-discrimination protections can help insulate people of all backgrounds from the risk of encountering unnecessary barriers to government-funded services, programs, and employment that will only worsen existing disparities and exacerbate negative economic and health outcomes. We respectfully encourage the Department to finalize the Proposed Rule, with the recommended additions, as soon as possible.

The Center appreciates the opportunity to comment on this Proposed Rule. If you have any questions, please contact Vandana Ranjan ([vranjan@reprorights.org](mailto:vranjan@reprorights.org)).

Sincerely,  
Vandana Ranjan

---

<sup>6</sup> Prince Chingarande, *USAID Denies Report That Suggests It Funds Conversion Therapy*, WASH. BLADE (July 15, 2021), <https://www.washingtonblade.com/2021/07/15/usa-id-denies-report-that-suggests-it-funds-conversion-therapy>.

<sup>7</sup> Proposed Rule § 602.20.

<sup>8</sup> WHAT LAWS PROTECT PEOPLE WITH HIV OR AIDS FROM DISCRIMINATION?, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES HIV.GOV (last updated Apr. 17, 2023) <https://www.hiv.gov/hiv-basics/living-well-with-hiv/your-legal-rights/civil-rights>.

<sup>9</sup> See USAID, ADS CHAPTER 320 BRANDING AND MARKING (2022), [https://www.usaid.gov/sites/default/files/2024-01/320\\_012624.pdf](https://www.usaid.gov/sites/default/files/2024-01/320_012624.pdf).