



December 7, 2022

The President of the United States
The White House

Jennifer Klein
Chair
White House Gender Policy Council

The Vice President of the United States
The White House

Hon. Merrick Garland
Attorney General
United States Department of Justice

Hon. Kiran Ahuja
Director
Office of Personnel Management

Hon. Shalanda Young
Director
Office of Management and Budget

Dear Mr. President, Madam Vice President, Director Ahuja, Director Young, Chair Klein, and Attorney General Garland:

The DOJ Gender Equality Network (DOJ GEN),¹ a federal employee-run organization that advocates for gender equity and equality in the federal workforce, appreciates the efforts of the Biden-Harris Administration to address the healthcare crisis caused by the Supreme Court’s decision overturning *Roe v. Wade*. However, we remain disappointed that the Administration has failed to act to protect abortion access for the Nation’s federal civil servants. We urge you again to take commonsense steps to protect abortion access for federal workers and their families, especially the nearly two million federal employees who live in states that have banned abortion or likely will soon.² We also ask that you eliminate all bans on comprehensive abortion coverage—including the one that applies to federal employee health insurance plans—from your proposed budget for Fiscal Year 2024.

¹ DOJ GEN is a federal employee-run organization with approximately 1,250 members from the Department of Justice. Since our founding in 2016, we have worked diligently to promote gender equity and equality at DOJ and throughout the federal workforce. To that end, DOJ GEN strives to eradicate pay inequities and sexual misconduct, while encouraging family-friendly policies and workplace flexibility. DOJ GEN does not speak for the Justice Department or any component thereof. More about us is available at www.dojgen.org.

² Office of Personnel Management, Policy, Data, Oversight: Federal Civilian Employment (September 2017), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/> (breaking down number of federal civilian employees by state); Center for Reproductive Rights, After Roe Fell: Abortion Laws by State, <https://reproductiverights.org/maps/abortion-lawsby-state/> (focusing on states identified as “hostile” or “illegal”).

This past May and August, we encouraged you to protect federal employees' abortion access by:

- Providing administrative leave and covering travel expenses for employees who must travel out of state for abortion care.
- Allowing employees to opt out of travel or relocation to states that ban abortion.
- Restricting the consideration of abortion-related activity during federal employee background investigations.
- Including advocates for federal employees in the Administration's response.³

With the exception of the Department of Justice, our letters were met with near silence. In the meantime, the Department of Defense announced measures to help service members and their families obtain abortion care, including by allowing for administrative absences, establishing travel and transportation allowances, and enhancing privacy protections.⁴ Extending these types of measures to the civil service is feasible, and we ask that the Administration do so right away to help federal employees weather the current healthcare crisis.

As we explained in a recent op-ed in *The Hill*,⁵ the President can also protect federal employees' abortion access by removing the ban on comprehensive abortion coverage in our health insurance plans. The recent elections demonstrate strong public support for abortion rights in the wake of the Supreme Court decision overturning *Roe v. Wade*, yet bans on insurance coverage continue to keep abortion care out of reach for millions of people throughout the country.⁶ We commend the Administration for removing the Hyde Amendment's ban on abortion coverage for Medicaid recipients from the FY 2022 and FY 2023 budgets, but we urge you to go further by removing *all* bans on abortion coverage from the FY 2024 budget.

³ Letter from DOJ GEN to OPM, OMB & White House Gender Policy Counsel (May 18, 2022), <https://static1.squarespace.com/static/61f3032d7eb5233ccc782af9/t/62854ff336543b1f47ab89a4/1652903923392/D+OJ+GEN+letter+to+Admin+leaders+re+leave+for+abortion+care.pdf>; Letter from DOJ GEN to Vice President Harris, DOJ, OPM, OMB & White House Gender Policy Counsel (Aug. 4, 2022), <https://static1.squarespace.com/static/61f3032d7eb5233ccc782af9/t/62ebfb875c2de16588ec397f/1659632519646/D+OJ+GEN+Letter+on+Abortion+Access+for+Federal+Employees+8.4.22.pdf>.

⁴ Memo from Sec'y of Defense Lloyd J. Austin to Senior Pentagon Leadership re: Ensuring Access to Reproductive Health Care (Oct. 20, 2022), <https://media.defense.gov/2022/Oct/20/2003099747/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-REPRODUCTIVE-HEALTH-CARE.PDF>.

⁵ Stacey Young & Jen Swedish, *The Government Should Be Ahead of the Curve on Abortion Coverage, Not Behind*, THE HILL (Dec. 5, 2022), <https://thehill.com/opinion/healthcare/3762323-the-government-should-be-ahead-of-the-curve-on-abortion-coverage-not-behind/>.

⁶ Abortion-coverage bans affect a wide range of people who obtain health insurance or health care through the federal government, including federal employees and their dependents (FEHBP and TRICARE); enrollees in federal insurance programs (Medicaid, Medicare, Children's Health Insurance Program); and people who rely on the federal government to provide their health care (Indian Health Service, Peace Corps, Bureau of Prisons, Immigration and Custom Enforcement). See Megan K. Donovan, *In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact*, 20 Guttmacher Policy Review 1, 3 (2017), <https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact>; U.S. Dep't of Veterans Affairs, Press Release, VA Will Offer Abortion Counseling and – in Certain Cases – Abortions to Pregnant Veterans and VA Beneficiaries (Sept. 2, 2022), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5820>.

As an organization that advocates on behalf of federal employees, DOJ GEN is particularly concerned about the ban on abortion coverage in the Federal Employee Health Benefits Program (FEHBP), which unfortunately remained part of the President’s last two budgets. As the largest employer-sponsored group health insurance program in the world, FEHBP covers almost 9 million people, including 2.1 current federal employees.⁷ And every fiscal year since 1983 except for one, those beneficiaries have been denied the opportunity to choose a private health plan that includes abortion coverage. Instead, politicians have decreed that we must pay out of pocket for abortion care unless our lives are in danger or our pregnancies resulted from rape or incest.

Federal employees deserve the right to live safe, healthy lives and to be free to define our own paths. This requires access to the full spectrum of healthcare, including abortion, which should not be denied to us by the government we serve. Failing to provide comprehensive coverage for abortion limits, or even eliminates, our ability to make our own healthcare decisions. We, in consultation with our healthcare providers—not politicians—know what is best for us and our families.

Because of the unjust FEHBP abortion coverage ban, federal employees who need abortion care have no choice but to pay out of pocket—and costs can range from \$550 to around \$1,700, depending on gestation.⁸ If employees must also travel long distances due to limited provider options or restrictive state laws, they may have to pay several thousand dollars.⁹ Although many private employers now cover abortion-related travel costs, the Administration has failed to do so for its civilian employees, despite DOJ GEN’s requests and the needs of government workers.¹⁰ Without insurance coverage, these costs will place a significant financial burden on federal employees—particularly women, people of color, and their families—and may put abortion care entirely out of reach for many of them, especially the thousands of federal employees who live at or near the federal poverty level.¹¹

Denying federal employees insurance coverage for abortion hinders the Administration’s work to advance diversity, equity, inclusion, and accessibility in the federal workforce generally, and specifically frustrates the goal of gender equity and parity for federal employees by disproportionately burdening women.¹² It also places the federal government out of step with the

⁷ U.S. Office of Personnel Management, Federal Employee Health Benefits (FEHB) Facts, <https://www.opm.gov/retirement-center/publications-forms/pamphlets/ri75-13.pdf>.

⁸ Elizabeth Witwer, *et al.*, *Abortion Service Delivery in Clinics by State Policy Climate in 2017*, 2 *Contraception*: X 1, 3–4 (2020), <https://www.guttmacher.org/article/2020/10/abortion-service-delivery-clinics-state-policy-climate-2017>.

⁹ Allison McCann, *What It Costs to Get an Abortion Now*, NY TIMES, Sept. 28, 2022, <https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html>.

¹⁰ *See supra* note 3.

¹¹ U.S. Dept. of Health & Human Servs., *HHS Poverty Guidelines for 2022*, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>; OPM, FedScope (December 2021), <https://www.fedscope.opm.gov/>.


¹² *See, e.g.*, Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, Exec. Order No. 14035, 86 F.R. 34593 (June 25, 2021); Executive Order on Establishment of the White House Gender Policy Council, Exec. Order No. 14020, 86 F.R. 13797 (Mar. 8, 2021).

private sector, where only 10% of insured employees work for an employer that excludes abortion coverage.¹³ This disparity is another impediment to the government’s efforts to recruit and retain top talent in today’s competitive job market. At a time when employees throughout the country want their employers to do more to ensure abortion access,¹⁴ the federal government should lead the pack, not lag behind.

We urge you to demonstrate the Administration’s commitment to becoming a “model employer and being competitive in the labor market”¹⁵ by implementing DOJ GEN’s previous proposals for protecting civil servants’ abortion access, while also removing abortion coverage bans from your FY 2024 budget. These actions are within your power to take, and are essential to the health and wellbeing of our Nation’s public servants.

Respectfully,
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¹³ Michelle Long, Mathew Rae & Alina Salganicoff, *Exclusion of Abortion Coverage from Employer-Sponsored Health Plans* (May 12, 2020), <https://www.kff.org/womens-health-policy/issue-brief/exclusion-of-abortion-coverage-from-employer-sponsored-health-plans/>.

¹⁴ Catalyst, *Abortion Access and the Workplace: What US Employees Expect from Their Organizations* (2022), <https://www.catalyst.org/research/roe-v-wade-abortion-workplace-survey/>.

¹⁵ The Biden-Harris Management Agenda Vision (November 18, 2021), https://assets.performance.gov/PMA/Biden-Harris_Management_Agenda_Vision_11-18.pdf.

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