

WHAT YOU
**NEED TO
KNOW**

About the

Global Gag Rule and U.S.
HIV/AIDS Assistance

An Unofficial Guide



Population Action
INTERNATIONAL

The Global Gag Rule and U.S. HIV/AIDS Assistance

An Unofficial Guide

The Mexico City Policy, also known as the Global Gag Rule, was reinstated in 2001.

It is a complicated policy for which explanations are rarely brief. Consequently, it is widely misunderstood and often over-interpreted. Anecdotal evidence from the field strongly suggests that the Global Gag Rule restrictions on U.S. family planning assistance are being mistakenly applied to other U.S. Agency for International Development (USAID) accounts, especially U.S. assistance for HIV/AIDS prevention, treatment and care.

The purpose of this guide is to clarify that the Global

Gag Rule does not apply to HIV/AIDS assistance from the U.S. government. And further, foreign non-governmental organizations (NGOs) providing HIV/AIDS-related services are eligible to receive U.S. HIV/AIDS assistance, regardless of their eligibility to receive U.S. family planning assistance. This guide also seeks to help current and potential recipients better understand the restrictions governing U.S. HIV/AIDS assistance.

An important note – the information contained in this brochure should not be interpreted as an explicit or implied endorsement on the part of Population Action International (PAI), its Board of Directors or staff of the Global Gag Rule policy or its implementation by the U.S. government.

U.S. HIV/AIDS assistance is exempt from the gag rule.

Background: The Global Gag Rule

In January 2001, the Bush Administration reinstated restrictions on overseas health care organizations, officially known as the Mexico City Policy and called the Global Gag Rule by family planning supporters. Under these restrictions on programs supported by USAID, no U.S. family planning assistance can be provided to foreign NGOs that use funding from any other source to:

- perform abortions in cases other than a threat to the life of the woman, rape, or incest;
- provide counseling and referral for abortion; or
- lobby to make abortion legal or more available in their country.

U.S. NGOs and foreign governments are exempt from the restrictions, although U.S. NGOs are required to enforce the restriction on foreign NGOs receiving U.S. family planning assistance.

The restoration of the gag rule has resulted in tremendous confusion among health care providers and others. In response, PAI published the brochure *What You Need to Know About the Global Gag Rule Restrictions: An Unofficial Guide* to help clarify for both U.S. and foreign NGOs the specific restrictions imposed by the policy. The brochure identifies the types of activities that foreign NGOs can engage in without endangering their eligibility to receive U.S. family planning assistance.

In addition, the provision of emergency contraception (EC) is not prohibited by the gag rule, or by any other USAID policy. U.S. and foreign NGOs receiving USAID assistance for family planning may provide emergency contraception pills (ECPs) and may engage in EC advocacy, in accordance with host country laws and policies. PAI published another brochure, *Emergency Contraception and the Global Gag Rule – An Unofficial Guide*, to make these facts clear.

The President's Emergency Plan for AIDS Relief (PEPFAR)

In May 2003, the U.S. significantly increased its political and financial commitment to combating HIV/AIDS globally with

passage of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25). At the heart of this new law – also known as the President’s Emergency Plan for AIDS Relief, or PEPFAR – is the funding goal of providing \$15 billion over five years (2004–2008) for AIDS-related services in 12 African countries, 2 Caribbean countries and 1 Asian country.¹ The funds are being administered by the newly-created Office of the U.S. Global AIDS Coordinator housed in the U.S. Department of State.

PEPFAR represents a major shift in U.S. HIV/AIDS policy: 80 percent of the new bilateral assistance will be directed to AIDS treatment and care. The remaining 20 percent will go toward HIV prevention activities, and of this amount, at least one-third must be set aside for “abstinence until marriage” programs. Field staff need to be aware of the new restrictions on HIV prevention activities under PEPFAR. (These are described later in this brochure.)

In August 2003, the Bush Administration explicitly clarified that PEPFAR funds are exempt from the gag rule restrictions. The August 29, 2003 memorandum from the President to the Secretary of State concerning his decision to apply the gag rule to State Department “family planning grants,” explicitly states that the restrictions “shall not apply to foreign assistance furnished pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003.” (See appendix for full text of memorandum.) President Bush could not have said it more clearly – U.S. HIV/AIDS funds are not restricted by the gag rule.

The Global Gag Rule and HIV/AIDS Assistance

U.S. HIV/AIDS assistance is exempt from the gag rule.

None of the funds flowing from PEPFAR – or from any other U.S. government source of HIV/AIDS assistance,

¹ Botswana, Cote d’Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam and Zambia.

including USAID bilateral programs in non-PEPFAR countries – for HIV/AIDS-related services are subject to the gag rule restrictions. The gag rule restrictions only apply to family planning assistance provided by USAID and by the State Department.

USAID’s *Guidance on the Definition and Use of the Child Survival and Health Programs Fund* issued in July 2004 suggests that family planning counseling and referral services may be supported with HIV/AIDS funds as part of a comprehensive approach to preventing mother-to-child-transmission (MTCT) of HIV where a direct contribution to increased access to MTCT services can be demonstrated. In this situation, the gag rule would not apply since the activity would not be construed as a “family planning assistance” intervention.

However, activities that are jointly supported with family planning and HIV/AIDS funds *are* subject to the gag rule. For example, if a youth-focused HIV/AIDS assistance project is supported with funds from both family planning and HIV/AIDS accounts, the entire project is subject to the gag rule restrictions. In any project that is co-funded with family planning assistance and other health funding, regardless of the amount of family planning dollars involved, the gag rule restrictions apply.

Foreign NGOs that refused the gag rule restrictions on U.S. family planning assistance are eligible to receive HIV/AIDS assistance.

Family planning NGOs providing relevant HIV/AIDS services as part of a package of sexual and reproductive health care can receive U.S. HIV/AIDS assistance. A foreign NGO’s eligibility to receive U.S. family planning assistance is irrelevant to its eligibility for HIV/AIDS assistance. No legal or policy restriction prohibits providing HIV/AIDS assistance to such a foreign NGO.

The U.S. Global AIDS Coordinator, USAID country missions, U.S. Cooperating Agencies, or foreign NGOs may provide HIV/AIDS assistance to foreign NGOs otherwise ineligible for U.S. family planning assistance. Programmatic discretion is provided to U.S. officials, and decisions can be

based on whether the nature and quality of an organization's HIV/AIDS services and its history of involvement make it a logical partner for U.S. government-supported efforts in a given country.

In many developing countries, family planning and reproductive health NGOs are experienced providers of HIV prevention and screening services to two critical populations – women and youth. These NGOs have extensive, well-developed networks of community-based volunteers to provide HIV education, referrals and condoms. Many possess the clinical capacity and infrastructure to provide basic HIV counseling and testing, while others are participating in national programs to prevent mother-to-child-transmission through existing obstetric care services, or providing home-based care to clients. Involving these providers in U.S.-supported HIV/AIDS programs will augment and strengthen the overall effort to prevent and treat HIV/AIDS.

The gag rule does not apply to U.S.-donated condoms and other commodities purchased with HIV/AIDS funds.

Foreign NGOs, even those no longer receiving U.S. family planning assistance because they refused the terms of the gag rule, are eligible to receive male and female condoms purchased through USAID's Commodity Fund or with PEPFAR funds for purposes of HIV/AIDS prevention. In addition, other commodities, equipment, and technical assistance may be provided to these NGOs using HIV/AIDS assistance.

U.S. and foreign NGOs receiving HIV/AIDS assistance may engage in lawful abortion-related activities with their private, non-U.S. funds.

NGOs do not jeopardize their U.S. HIV/AIDS funding if they provide legal abortion services, counsel and refer women about abortion, or engage in lobbying or advocacy campaigns to legalize or to “continue the legality” of abortion in accordance with host-country laws and policies. These activities must be paid for with private, non-U.S. funds.

U.S. and foreign NGOs receiving HIV/AIDS assistance may engage in post-abortion care and certain types of research on abortion supported by U.S. funds.

In reinstating the gag rule, President Bush clearly stated that post-abortion care (PAC) for “treating injuries or illnesses caused by legal or illegal abortions” is permitted. Therefore, PAC activities are considered a key component of USAID’s safe motherhood and family planning programs, although USAID does not finance the purchase or distribution of manual vacuum aspiration (MVA) equipment for any purpose. USAID assistance may also be used to conduct demographic and epidemiological research on the incidence and health consequences of abortion.

Under longstanding U.S. law, all U.S. foreign aid recipients – multilateral, governmental and nongovernmental – are prohibited from directly using foreign assistance funds for abortion.

The 1973 Helms Amendment – a prohibition on the direct use of any U.S. foreign assistance funds for abortion – remains in law and applies to HIV/AIDS assistance. In order to comply with the Helms Amendment, NGOs, both foreign and domestic, must have accounting systems in place in order to ensure that no U.S. foreign assistance funds, regardless of the funding account or for what purpose designated, are spent on abortion services, biomedical research on abortion, or lobbying on abortion.

Provisions Governing U.S. HIV/AIDS Funds

NGOs carrying out HIV prevention activities with U.S. HIV/AIDS funds need to be mindful of new restrictions and conditions governing these funds. Before a U.S. or a foreign NGO may receive Fiscal Year 2004 (FY04) HIV/AIDS funds under a grant or cooperative agreement, they must provide written certification that they are in compliance with

applicable provisions related to prostitution and sex trafficking and condoms.

Prostitution and Sex Trafficking – New Requirements for U.S. and Foreign NGOs

No U.S. funds may be used “to promote or advocate the legalization or practice of prostitution or sex trafficking.” Additionally, the following clause must be included in any grant or cooperative agreement involving FY04 HIV/AIDS funds, including subagreements between U.S. and foreign NGOs:

*“PROHIBITION ON THE PROMOTION OR
ADVOCACY OF THE LEGALIZATION OR
PRACTICE OF PROSTITUTION OF SEX
TRAFFICKING (FEB. 2004)*

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.”

Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”

Like the gag rule, however, PEPFAR applies a new requirement solely on foreign NGOs. As a condition of eligibility, foreign NGOs are required to have a policy explicitly opposing prostitution and sex trafficking. U.S. NGOs, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and other United Nations organizations are exempt from this

requirement. However, U.S. NGOs must enforce on their foreign NGO partners the requirement for an explicit policy prior to entering into a subagreement to provide them with U.S. HIV/AIDS funds.

“Conscience Clause” for Faith-Based Organizations

Organizations that are unwilling to discuss the full range of HIV prevention options with clients are now eligible for U.S. HIV/AIDS assistance. The law specifies that an organization is “not required, as a condition of receiving assistance...to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.”

Accurate Information on Condoms

U.S. law requires that condom information provided in U.S.-funded programs “be medically accurate and shall include the public health benefits and failure rates of such use.” Organizations that have a moral objection to the promotion of condoms as part of a comprehensive HIV/AIDS prevention strategy are not required to provide information on condoms or to counsel clients about condoms. They may not, however, disparage condoms as a means of promoting an abstinence-only approach to HIV prevention.

For more information on U.S. HIV/AIDS policy, see resources listed at the end of this brochure. Note that while current policy guidelines implementing these legal provisions are final, the provisions may be subject to further changes during the legislative and administrative process in the future.

HIV/AIDS Assistance and Family Planning/Reproductive Health

With U.S. HIV/AIDS funds unencumbered by the gag rule restrictions, NGOs and USAID missions should be aware of current U.S. policy regarding the coordination of family

planning and related health care with provision of HIV/AIDS services. Family planning counseling, referrals and contraceptive supplies (including condoms for prevention of both pregnancy and infection) are important elements of any comprehensive HIV prevention effort.

Released in February 2004, the *U.S. Five-Year Global HIV/AIDS Strategy* issued by the U.S. Global AIDS Coordinator outlines the programmatic priorities for the use of HIV/AIDS funds in the 15 focus countries. The strategy specifies in detail what types of activities the United States will support in the areas of HIV/AIDS prevention, treatment and care, and makes several references to family planning.

In the section entitled, *Prevention of HIV infection from mother to child* (p. 27), suggested activities include: “Providing technical assistance and expanded training for health care providers (including family planning providers, traditional birth attendants, and others) on appropriate antenatal care, safe labor and delivery practices, breastfeeding, malaria prevention and treatment, and family planning; and strengthening the referral links among health care providers.”

In another section, *Innovatively expanding HIV testing* (p. 29), the strategy calls for increasing the availability of HIV testing services through several approaches, including: “Integrating testing with other health services, such as family planning, antenatal care, STI [sexually transmitted infection], tuberculosis, and malaria programs, and improving the referral links among all of these services.”

Improving diagnosis and treatment of STIs (p. 31) will be achieved through increased support for STI services that are formally linked to HIV testing and counseling services: “Increasing availability and accessibility of STI treatment services through the expansion of STI prevention and treatment services where appropriate; and integrating STI treatment services with other HIV/AIDS and reproductive health care services and improving the referral links between programs.”

Further Information

The sources for the information contained in this brochure include the following documents:

For the full text of the Global Gag Rule restrictions, see U.S., USAID, Contract Information Bulletin, “Restoration of the Mexico City Policy – White House Memorandum for the Acting Administrator of the U.S. Agency for International Development (Revised),” [CIB 01-08 (R)], 29 March 2001. Available on the USAID website at http://www.usaid.gov/procurement_bus_opp/procurement/cib/pdf/cib0108r.pdf

For the text of the memorandum exempting HIV/AIDS programs from Global Gag Rule restrictions, see U.S., Executive Office of the President, “Assistance for Voluntary Population Planning,” Memorandum for the Secretary of State, 29 August 2003. Available via the Internet on the White House website at <http://www.whitehouse.gov/news/releases/2003/08/print/20030829-3.html>

For a copy of the PAI brochure *What You Need to Know About the Global Gag Rule Restrictions – An Unofficial Guide*, go to http://www.populationaction.org/resources/publications/globalgagrule/Global_Gag_Rule_Book.pdf

For a copy of the PAI brochure *Emergency Contraception and the Global Gag Rule – An Unofficial Guide*, go to http://www.populationaction.org/resources/publications/globalgagrule/EmergencyContraception_final.pdf

For the full text of the legislation authorizing the President’s Emergency Plan for AIDS Relief, see United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law No. 108-25). Available on the U.S. Government Printing Office website at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ025.108.pdf

For additional legislative policy directives and restrictions, see Foreign Operations, Export Financing, and Related Programs Appropriations (Division D), Consolidated Appropriations Act of 2004, Public Law 108-199. Available on the U.S. Government Printing Office website at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2673enr.txt.pdf

*For the five-year strategy for U.S. HIV/AIDS prevention, treatment, and care programs, see U.S., Department of State, Office of the U.S. Global AIDS Coordinator, *The President's Emergency Plan for AIDS Relief – U.S. Five-Year Global HIV/AIDS Strategy*, 23 February 2004. Available on the U.S. Department of State website at <http://www.state.gov/documents/organization/29831.pdf>*

*For information on USAID guidance with regard to the use of Child Survival and Health Programs Fund, see U.S., USAID, *Guidance on the Definition and Use of the Child Survival and Health Programs Fund*, FY 2004 Update, July 2004. Available via the Internet on the USAID website at <http://www.usaid.gov/policy/ads/200/200mab.pdf>*

For specific policy guidance on U.S. HIV/AIDS funding eligibility, see U.S., USAID, Acquisition & Assistance Policy Directive, “Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking,” [AAPD 04-04 (Revised)], 26 February 2004. Available via the Internet on the USAID website at http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04.pdf

*For information on USAID technical guidance with regard to linking family planning and HIV/AIDS activities, see U.S., USAID, *Family Planning/HIV Integration – Technical Guidance for USAID-Supported Field Programs*, September 2003. Available via*

the Internet on the USAID website at http://www.usaid.gov/our_work/global_health/pop/publications/docs/fphiv.pdf

For official clarification of U.S. government restrictions affecting HIV/AIDS assistance, organizations should write directly to:

Office of the U.S. Global AIDS Coordinator (S/GAC)
Department of State
2100 Pennsylvania Avenue, NW
Department of State
Washington, DC 20522
Phone: (202) 663-2440
Fax: (202) 663-2979
Website: <http://www.state.gov/s/gac/>

For copies of the documents quoted or referenced in this summary, for assistance in understanding current USAID policies, or to submit information on the experiences of organizations in implementing the Global Gag Rule, please contact:

Population Action International
Attn: Public Policy & Strategic Initiatives
1300 19th Street, NW, Second Floor
Washington, DC 20036 USA
implement@popact.org

Other NGOs that may be able to furnish various types of assistance – informational, technical, legal, or financial – to foreign NGOs seeking to interpret and understand the policies governing U.S. family planning and HIV/AIDS assistance include:

EngenderHealth – www.engenderhealth.org
Family Health International – www.fhi.org
Global Health Council – www.globalhealth.org
International Planned Parenthood Federation – www.ippf.org
John Snow, Inc. – www.jsi.com
Pathfinder International – www.pathfind.org
Population Services International – www.psi.org



APPENDIX

Presidential Memorandum Expanding the Global Gag Rule to the State Department Exempting HIV/AIDS Programs

August 29, 2003

the
White House
President George W. Bush

Memorandum

Memorandum for the Secretary of State

SUBJECT: Assistance for Voluntary Population Planning

On March 28, 2001, I issued a memorandum for the Administrator of the United States Agency for International Development (USAID) directing that certain conditions be placed on assistance for family planning activities provided to foreign nongovernmental organizations by USAID.

Because family planning grants are awarded by the Department of State outside of USAID as well as through USAID, you are hereby directed to extend the requirements of the March 28, 2001, memorandum to all assistance for voluntary population planning furnished to foreign nongovernmental organizations and appropriated pursuant to the Foreign Assistance Act, whether such assistance is furnished by USAID or any other bureau, office, or component of the Department of State.

As set forth in the March 28, 2001, memorandum, this policy applies to certain assistance provided to foreign nongovernmental organizations. Such organizations do not include multilateral organizations that are associations of governments. This policy shall not apply to foreign assistance furnished pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25).

The foregoing directive is issued consistent with the authority vested in me by the Constitution and laws of the United States of America, including sections 104 and 104A of the Foreign Assistance Act of 1961, as amended.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH

Available via the Internet on the White House website at
<http://www.whitehouse.gov/news/releases/2003/08/print/20030829-3.html>

About PAI

Population Action International (PAI) is an independent policy advocacy group working to strengthen political and financial support worldwide for population programs grounded in individual rights. Founded in 1965, PAI is a private, non-profit group and accepts no government funds.

At the heart of Population Action International's mission is its commitment to advance universal access to family planning and related health services, and to educational and economic opportunities, especially for girls and women. Together, these strategies promise to improve the lives of individual women and their families, while also slowing the world's population growth and helping preserve the environment.



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