

The Global Gag Rule/ Protecting Life in Global Health Assistance/Mexico City Policy: What to Know Now

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The purpose of this document is to describe what is known about the expansion of President Trump's Global Gag Rule (GGR) and analyze how, based on previous versions, this could hinder ongoing and/or new efforts to provide HIV, sexual and reproductive, and other health services. We also hope to provide some guidance on what GAPP members do and do not need to do as GGR is implemented across global health assistance.

What is Protecting Life in Global Health Assistance/the Global Gag Rule?

Protecting Life in Global Health Assistance or "the Global Gag Rule", called the Mexico City Policy in prior iterations, is a U.S. policy that conditions the eligibility of foreign NGOs for assistance from the U.S. government on their agreement not to engage in abortion-related activities. The Global Gag Rule denies foreign organizations receiving U.S. funding the right to use their own funds for the provision, counselling, or referral for abortion services, or advocacy for liberalization of abortion laws. Put in place by President Reagan, it has been rescinded by every Democratic president and re-instated by every Republican president for over 30 years.

What is Trump's Global Gag Rule?

As reinstated by President Trump on January 23, 2017, and per the May 15, 2017 implementation plan and Standard Provision, the Global Gag Rule has been expanded to *nearly* all "global health assistance."¹ During previous Republican administrations, the Global Gag Rule applied only to U.S. family planning assistance from USAID and the U.S. Department of State. The memorandum issued by President Trump and subsequent implementation plan expanded the types of U.S. funds to which the Global Gag Rule will be applied. The Global Gag Rule still only applies to **non-U.S.** NGOs.²

This expansion means that it disqualifies **non-U.S.** NGOs (for-profits and not-for-profits) from **receiving U.S. global health assistance** under a grant, cooperative agreement, or contract from **all U.S. departments and agencies** if they 1) provide induced abortion services as a method of family planning, 2) provide induced abortion counseling or referral or 3) advocate or lobby for the liberalization of abortion laws and policies, **even with funds obtained from other donors.**^{3 4}

Assistance has previously been defined broadly, including funds, technical assistance, training (with some exceptions) and commodities (such as contraceptives).⁵ The policy has not applied to foreign-NGOs that do research (not for advocacy) on abortion⁶, provide post-abortion care, or provide induced abortion to save the life of the woman or in cases of rape or incest.⁷ In countries where abortion is legally permitted in other circumstances, induced abortion counseling and referral is permitted for these circumstances if certain conditions are met.⁸

¹ For detailed discussion of what "nearly" is expected to mean, see PAI, TRUMP GLOBAL GAG RULE GUIDANCE – EVERYTHING BUT THE KITCHEN SINK, May 27, 2017, available at <https://pai.org/newsletters/everything-kitchen-sink/>

² See generally PAI, WHAT YOU NEED TO KNOW ABOUT THE MEXICO CITY POLICY RESTRICTIONS ON US FAMILY PLANNING ASSISTANCE: AN UNOFFICIAL GUIDE (2006), available at <http://pai.org/wp-content/uploads/2017/01/What-You-Need-to-Know-About-the-Mexico-City-Policy-Restrictions-on-US-Family-Planning-Assistance-An-Unofficial-Guide.pdf>.

³ THE WHITE HOUSE, PRESIDENTIAL MEMORANDUM REGARDING THE MEXICO CITY POLICY, Jan. 23, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>.

⁴ See CTR. FOR HEALTH & GENDER EQUITY, IMPACT OF GLOBAL GAG RULE ON WOMEN'S HEALTH (2017) http://www.genderhealth.org/files/uploads/change/publications/GGR_Fact_Sheet_Feb2017_FINAL_1.pdf.

⁵ *Id.*

⁶ There is still some lack of clarity on how research is included in Trump's GGR. "The policy covers implementation-science research, operational or programmatic research, surveys, needs assessments and related capacity-building conducted for the purpose of making improvements to global health assistance programs funded by the U.S. Government and implemented through a foreign NGO with a primary purpose or effect of benefiting a foreign country," STATE DEPARTMENT, "Implementation of Protecting Life in Global Health Assistance (Formerly known as the 'Mexico City Policy')," PRM press guidance, May 15, 2017.

⁷ CTR. FOR REPRODUCTIVE RIGHTS, THE BUSH GLOBAL GAG RULE: A VIOLATION OF INTERNATIONAL HUMAN RIGHTS (2000) https://www.reproductiverights.org/sites/default/files/documents/pub_bp_bushggr_violation.pdf.

⁸ PAI, *supra* note 1.

What happens next?

On May 15, 2017, the State Department released the implementation plan for the expansion of Trump’s Global Gag Rule. On May 22, 2017, USAID made public the Standard Provision to implement the 2017 Presidential Memorandum, entitled “PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE (MAY 2017)”. This Standard Provision applies to foreign non-governmental organizations receiving global health assistance and requires U.S. organizations to obtain such an agreement from their foreign non-governmental sub-recipients of USAID global health assistance.⁹

This means that for all **new** global health assistance awards, GGR clauses will be included. For **existing** global health assistance awards, GGR clauses will be added as new incremental funds are notified and obligated – i.e., awardees will not be able to receive additional funding obligations without agreeing to the GGR clauses. This will apply not only to funding that is yet-to-be-noticed, but also to funding that has been noticed but not yet obligated. Given that funding is typically allocated incrementally, it is likely that all existing global health assistance awards will be covered by GGR within a year.

What does “global health assistance” mean?

For global health assistance administered by the State Department, a document issued by the State Department’s Office of the Procurement Executive, titled Federal Assistance Management Advisory Number 2017-01, states that “this policy applies to all Department of State awards that fall under the Health category of the Foreign Assistance Standardized Program Structure except: awards funded under program area HL.8, Water Supply and Sanitation....”¹⁰

For global health assistance administered by USAID, the GGR restrictions are “applicable to those awards using federal funding predictably for international health activities with a primary purpose or effect of benefiting a foreign country, typically from the [Global Health Programs], [Economic Support Fund], [Assistance for Europe, Eurasia, and Central Asia], or successor accounts.” The USAID Standard Provision also stipulates that, in addition to health activities funded under the named funding accounts, the GGR applies to “awards reported on under the Health category of the Foreign Assistance Standardized Program Structure, except those under program area HL.8.” Two additional programs were explicitly exempted—American Schools and Hospitals Abroad and Food for Peace.¹¹ U.S. bilateral global health assistance to address the following urgent public health challenges are subject to GGR:

- HIV/AIDS, including the President’s Emergency Plan for AIDS Relief (PEPFAR);
- Tuberculosis;
- Malaria, including the President’s Malaria Initiative (PMI);
- Pandemic Influenza and Other Emerging Threats;
- Other Public Health Threats, including neglected tropical diseases and other infectious diseases, non-communicable diseases, and health system strengthening;
- Maternal and Child Health;
- Family Planning and Reproductive Health; and
- Nutrition.¹²

What is not included?

Please note that specific entities and funding streams that are not impacted by GGR should be referred to as “not included” rather than as “exempt”. We do not want to unintentionally send a signal that there are special carve-outs.

The GGR does not apply to foreign governments (“national and sub-national”), U.S. nongovernmental organizations, and multilateral organizations. In addition, “other multilateral entities in which sovereign nations participate” are not subject

⁹ USAID, STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL ORGANIZATIONS 83-92 (2017), available at <https://www.usaid.gov/sites/default/files/documents/1868/303mab.pdf>.

¹⁰ STATE DEPARTMENT, “Subject: Protecting Life in Global Health Assistance,” Federal Assistance Management Advisory Number 2017-01

¹¹ USAID, *supra* note 9.

¹² USAID, *supra* note 9.

to the GGR requirements. This includes both the Global Fund to Fight AIDS, TB, and Malaria and Gavi, the Vaccine Alliance.

Humanitarian assistance, including State Department migration and refugee assistance, USAID disaster and humanitarian relief activities, and Department of Defense disaster and humanitarian relief activities are not included.

Abortion services or counselling and referring for abortion in cases of life endangerment, rape, or incest; and post-abortion care, including “treatment of injuries or illnesses caused by legal or illegal abortions” are not included. These services can and should be provided even when GGR is in effect.

Does the GGR apply to Emergency Contraception?

No. Nothing in the GGR implicates the procuring, distribution, and programming of Emergency Contraception (i.e. Plan B or the Morning After Pill). All activities should continue un-interrupted.

Does this apply to our organization?

If your organization is **not** U.S. based and receives “Global Health Assistance” through direct funding from the U.S. government or as a sub-recipient, the Global Gag Rule will apply to you. Non-U.S. based organizations will need to decide whether to:

- 1. Take U.S. global health assistance and restrict their activities related to abortion, or**
- 2. Cease to take U.S. global health assistance.**

If your organization is U.S. based and receives “Global Health Assistance” funding from the U.S. government, you will need to [monitor and certify](#) compliance of the Global Gag Rule for all of your non-U.S. based sub-grantees.

Does this really apply to us?

The expansion is enormous, and includes many new organizations. The State Department Press Guidance released May 15, 2017 states that, “In consultation with the Secretary of HHS, the Secretary of State may authorize additional, case-by-case exemptions to the policy.” Organizations should consider requesting these exemptions.¹³

What are the immediate implications on our existing programs?

Until the Standard Provision with “Protecting Life in Global Health Assistance” is included in your agreement with the U.S. government, you should continue to provide all the same services and information as you have previously.

My organization’s grant already includes abortion restrictions, is this the Global Gag Rule?

No. Existing grants include language required by the Helms Amendment, which prohibits US money from directly funding abortion-related services. Prior to the reinstatement of the GGR, this meant that organizations could continue to perform abortion-related services as long as they did so with other donors’ funds.

¹³ STATE DEPARTMENT, “Implementation of Protecting Life in Global Health Assistance (Formerly known as the ‘Mexico City Policy’),” PRM press guidance, May 15, 2017.

What should we do now?

1. Organizations should consider requesting a case-by-case exemption.
2. Do not change what services and information you are providing until your contract/funding agreement with the U.S. government changes to reflect the GGR.
3. To the best of your ability, capture a snapshot of your organization now, before Trump's GGR goes into full effect. Having a clear picture of your contracts, agreements, services provided, and commodities procured now will help your organization tell the story of the harm of Trump's GGR later.
4. Capture and save all communications from U.S. missions and headquarters about the GGR, roll-out, and compliance. Documentation of how the policy is implemented will show the negative impact of the GGR and can be helpful with advocacy efforts for repeal.
5. The best way for organizations to respond is by becoming well-informed about U.S. funding policies, establishing clear compliance systems and remaining committed to evidence-based programming for women and girls.

More questions?

These members of the HIV Prevention Working Group are happy to answer questions and connect you to other resources:

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