

## Everything but the Kitchen Sink

On May 15<sup>th</sup>, the State Department released the implementation plan for the expansion of the Trump Global Gag Rule (GGR) to “global health assistance furnished by all departments or agencies” of the U.S. government. Consistent with the [January 23<sup>rd</sup> presidential memorandum](#), a foreign nongovernmental organization (NGO) will now be required to certify that it does not provide abortion services, counsel or refer for abortion, or advocate for abortion law reform, even if done with its own, non-U.S. funds, in order to remain eligible to receive U.S. bilateral global health assistance for any purpose and from any funding account—with very few exceptions. Because the only exemption within the U.S. government’s massive global health portfolio is provided for water and sewer infrastructure, the Trump GGR has literally been extended to everything but the kitchen sink.



Since the issuance of the presidential memorandum dramatically expanding the reach of the Global Gag Rule nearly four months ago, the crucial question has been how the parameters of “global health assistance” were to be defined in the implementation plan that the Secretary of State was directed to prepare. Now we know.

Late last night, the U.S. Agency for International Development (USAID) finally made public the [“standard provisions”](#) to be included in grants and cooperative agreements by USAID to implement the expanded Trump GGR. The revision to the agency’s automated directives system clarifies that with regard to USAID assistance, 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.

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....”

As a result, the expanded Trump GGR requires that foreign NGOs certify their willingness to comply with the policy and refrain from any abortion-related activities paid for with their own, privately raised, non-USG-funds as a condition for receiving U.S. bilateral global health assistance to address the following urgent public health challenges:

- 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.

## Exemptions Explained

The exception for Water Supply and Sanitation (program area HL.8) stipulated in the procurement memorandum exempts only water and sanitation infrastructure spending for some household settings, schools, health facilities, and industrial and commercial use and national policy development and governance activities. However, all household and community-level water, sanitation, hygiene ([WASH](#)) activities are subject to the GGR, including most behavior change communication and all of hygiene promotion (program element HL.6.7), as well as hygiene in health facilities, as these fall under the category of Maternal and Child Health (program area HL.6) in the U.S. government’s standardized foreign aid program structure.

As with earlier iterations of the GGR, most recently during the tenure of President George W. Bush, the restrictions do 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 to the GGR requirements, thereby exempting both the Global Fund to Fight AIDS, TB, and Malaria and Gavi, the Vaccine Alliance. Both entities operate much like multilateral organizations but are technically Swiss NGOs.

Other important programs or activities to which the GGR does not apply include:

- Humanitarian assistance, including State Department migration and refugee assistance and USAID and Department of Defense disaster and humanitarian relief activities;
- Basic health research, particularly biomedical, but not most operations or implementation-science research;
- Abortion services or counselling and referring for abortion in cases of life endangerment, rape, or incest;
- Post-abortion care, including “treatment of injuries or illnesses caused by legal or illegal abortions;” and
- American Schools and Hospitals Abroad, a program created in 1947 to provides assistance to construct and equip schools, libraries, and medical centers overseas; and
- Food for Peace (P.L. 480) programs, food assistance for both emergency relief and development purposes.

## Key Changes to the Policy

A few important changes between the expanded Trump GGR and the previous iteration during the Bush administration are worth highlighting:

- Contracts with foreign NGOs will be subjected to the GGR, where previously grants, cooperative agreements, and grants under contracts were the only funding instruments subject to the policy. However, development of a clause to be included in contracts will be the result of a forthcoming, interagency rule-making process, the duration of which is uncertain;
- Redefinition of the term “foreign nongovernmental organizations” to specify that foreign NGO is meant to include both “for-profits and not-for-profits”;
- Adding “abortions performed for fetal abnormalities” to the list of impermissible abortion indications by explicitly including it in the definition of what constitutes “abortion as a method of family planning;”
- Authority granted to the Secretary of State to make “additional, case-by-case exemptions” to the policy in consultation with the Secretary of Health and Human Services, presumably to be utilized in the event of public health emergencies such as disease outbreaks or epidemics;
- Elimination of an ambiguous exception for “clinics and hospitals that do not include abortion in their family planning programs.” Government-operated hospitals are captured under the exemption for foreign governments. To the best of PAI’s knowledge, the exemption was rarely, if ever, used by non-public clinics and hospitals; and
- Deletion of the prior exception provided for “child spacing” activities within integrated maternal and child health services. This is not unexpected given the dramatic expansion of GGR coverage to global health assistance across all sectors, including maternal and child health.

A [side-by-side chart](#) comparing the Bush and expanded Trump GGR versions of the policy has been prepared for a quick summary of the differences and similarities.

Although not a change from previous GGR iterations, one of the criteria that foreign NGOs must meet in order to retain eligibility for U.S. government funds has the potential to take on significantly greater importance with the application of the GGR to all of global health assistance, as opposed to just FP/RH programs in the past. Specifically, the eligibility criteria that requires that a foreign NGO certify that not only does it not itself engage in abortion-related activity, but also does not “provide financial support to any other foreign non-governmental organization that conducts such activities.” Depending on how the second condition is interpreted, a foreign NGO with a broad development and health portfolio could be disqualified from receiving U.S. global health assistance for providing funding to a foreign NGO partner for an education project, for example, if the other NGO is engaged in abortion-related activities, perhaps supported by its own government or another bilateral donor.

Such an expansive interpretation would require the expenditure of exponentially larger amounts of human and financial resources by the U.S. government, U.S. NGOs, and the foreign NGOs themselves to monitor GGR compliance among a much broader universe of NGOs. There is likely to be a miniscule return on this investment if done in the service of achieving the purported objective of the Trump GGR—rooting out and ending even indirect U.S. subsidies for abortion overseas.

### **Timing of Implementation**

While standard provisions to be included in USAID global health grants and cooperative agreements were made public yesterday after a week delay, how and when the Department of Health and Human Services (under whose purview the Centers for Disease Control and Prevention (CDC) and the National

Institutes of Health (NIH) fall) and the Department of Defense will implement the GGR expansion to their overseas health programs remains unclear. According to a transcript of a [State Department press briefing](#), “affected departments and agencies will either start required processes for approving a new standard provision, or, where possible, include the provision immediately,” beginning on May 15, 2017.

With regard to CDC, GGR is expected to be applied only to foreign assistance transferred to CDC from the State Department and USAID to support CDC’s role in supporting PEPFAR and PMI and in Zika and Ebola response. Not likely affected are funds directly appropriated to CDC through HHS for disease surveillance, immunization, global health security, HIV/AIDS, and malaria and other parasitic diseases, which are activities that tend to be conducted between the CDC and host governments. For NIH, the question of whether GGR will be applied to its overseas programs remains unanswered so far.

As in the previous iterations of the GGR, the restriction will not be applied to a foreign NGO until it faces a new funding action, either in the negotiation of a new grant or cooperative agreement or when existing grants and cooperative agreements “are amended to add incremental funding.” If funding is already obligated to a foreign NGO under an existing grant or cooperative agreement—but not expended—the organization should not be faced with certifying compliance with the restriction as a condition of its release and should receive the USG funding due without interference.

The [responsibilities of U.S. NGOs](#) under the expanded Trump GGR also remain the same as before. The U.S. NGO is required to certify that it will not furnish global health funding to a foreign NGO that “performs or actively promotes abortion as a method of family planning.” In other words, the U.S. NGO is charged with enforcing the GGR on its overseas partners on behalf of the U.S. government.

According to a [State Department estimate](#), the expanded GGR implicates approximately \$8.8 billion in bilateral global health assistance appropriated to the State Department, USAID, and the Department of Defense. This compares to just \$575 million in bilateral family planning and reproductive health funding, the only type of health assistance subjected to the GGR in its previous iterations during earlier Republican administrations. This represents a 15-fold increase in the amount of USG funding implicated under the expanded GGR.

State Department spokespersons took great pains in their statements to the press to assure that the expansion of the reach of the policy would not result in a decline in overall funding for USG global health programs. True, but implementation of an expanded GGR will [exclude some of the most effective—and in some cases, only—local health providers](#) in 60 low and middle income countries. Without funding, these organizations will be unable to provide integrated maternal health care with contraceptive services, HIV prevention, care and treatment services, or counsel women on their potential risks of Zika infection, among many other services, leaving communities and entire health systems devastated. In some countries and communities, these local NGOs who are unwilling or unable to certify GGR compliance may be the only game in town and not readily replaceable with other organizations who can effectively utilize the withheld, reprogrammed funds.

In announcing the GGR expansion, the State Department committed to “undertake a thorough and comprehensive review of the effectiveness and impact of the policy’s application” over the next six months with particular emphasis on the implementation challenges experienced by the global health programs not previously subjected to the GGR. PEPFAR and PMI were singled out but every other global

health program without prior GGR experience will be given “special attention,” presumably exempting FP/RH from the review.

### **Deadlier Than Ever**

The announcement of the implementation plan for an expanded GGR does not take place in a vacuum. This morning, the Trump administration released the President’s budget request for FY 2018. It is widely expected to contain a cut by as much of a third to State Department and USAID health program funding. Pledges that global health funding will not decline—overall or for individual sectors—ring a little hollow right now, whether due to policy changes or lower presidential priority in the federal budget for international affairs programs.

In announcing the details of the GGR expansion on May 15<sup>th</sup>, the Trump-Pence Administration also brazenly attempted to christen its expansion of the Global Gag Rule to all global health assistance with a new moniker. Previously known within the U.S. government as the Mexico City Policy, the administration is seeking to shamelessly rename Trump’s Global Gag Rule as “Protecting Life in Global Health Assistance.”

In the administration’s campaign to stifle women’s autonomy, Trump’s expanded Global Gag Rule will cause unspeakable damage to integrated health care efforts across all health sectors. It will cost many around the world their lives and their health—especially women and their children. Despite the Trump administration’s “[pathetic rebranding](#)” of the policy, the Global Gag Rule is unmistakably deadlier than ever.