

January 29, 2021

## What a Difference a Day Makes – President Biden Revokes Trump-Pence Expanded Global Gag Rule and Begins Reversal of Other Attacks on Women’s Health

So many consequential days — 24 little hours — that the nation has survived and celebrated recently: Election Day, the Georgia Senate runoff election, the insurrection at the U.S. Capitol and Inauguration Day. But yesterday was the day that the Biden-Harris administration began the process of reversing some of the multitude of attacks on sexual and reproductive health and rights (SRHR) perpetrated by the Trump regime during its four years in office and whose days in power have thankfully now come to an end.

Yesterday afternoon, eight days after being inaugurated, President Biden signed a [presidential memorandum](#) “immediately” rescinding the expanded version of the [Global Gag Rule](#) (GGR) imposed by former President Trump that forced non-U.S. nongovernmental organizations (NGOs) to choose between receiving U.S. global health assistance and providing comprehensive sexual and reproductive health care, including information, referrals or services for legal abortion or to advocate for the legalization of abortion in their country with their own, non-U.S. government funds. The extensive harm of the expanded GGR has been [well documented](#). The presidential memorandum also orders the resumption of a U.S. contribution to the United Nations Population Fund (UNFPA) and the repudiation of the “[Geneva Consensus Declaration](#)” (GCD), a repressive and harmful vision of SRHR that the Trump-Pence administration invented and sought other countries to endorse in an attempt to challenge the international consensus on reproductive choice and sexual expression.

On the homefront, the presidential memorandum also directs the Department of Health and Human Services (HHS) to begin the process of rescinding a 2019 rule, often referred to as the Domestic Gag Rule. This similarly harmful gag rule prevents health care providers in the Title X domestic family planning program from referring patients for abortion care; requires both physical and financial separation between family planning and abortion services; and strikes a previous requirement that providers present the full range of information on pregnancy and pregnancy options, including abortion. The memo includes a broad directive to the HHS Secretary to review the Title X restrictions “as soon as practicable” in order to consider “whether to suspend, revise or rescind” or launch a new rule-making process to alter or revoke Trump’s Domestic Gag Rule and “other regulations governing the Title X program.”

These actions are critical steps in addressing the damage done to SRHR around the world and at home over the past four years, yet it is just the beginning of the work that needs to be done.

Since the inauguration, the White House has used every workday to announce an unprecedented number of executive actions, whether as executive orders or presidential memoranda, organized around one main policy issue. Yesterday’s theme was health care.

In the past, presidents of both parties have typically used the January 22 anniversary of the 1973 *Roe v. Wade* Supreme Court decision to announce either their rescission or imposition of the GGR on one of their first few days in office. Nothing should be read into the delay of President Biden’s GGR announcement other than the sheer volume of urgent national problems and destructive Trump-Pence administration policies that needed to be — and have already been — addressed through executive action, ranging from pandemic response, economic recovery, climate change, racial equity and immigration.

There is always a certain amount of tea leaf reading, parsing of words and Kremlinology when a new Democratic president first comes into office, particularly one whose position and voting record on reproductive rights and abortion have significantly evolved over the course of his 36-year Senate tenure and career in public life. But the language used by the Biden-Harris administration in making and explaining its announcement signals clear shifts in our domestic and U.S. foreign policy around health care. It is worth quoting the accompanying White House [fact sheet](#) in its entirety and highlighting the terminology around caring for people most affected by health inequities; the explicit use of the internationally accepted phrase “sexual and reproductive health and rights”; and adoption of the name GGR rather than the Mexico City Policy and certainly not the Trump moniker “Protecting Life in Global Health Assistance.”

Protecting Women’s Health at Home and Abroad. Across the country and around the world, people – particularly **women, Black, Indigenous and other people of color, LGBTQ+ people, and those with low incomes** – have been denied access to reproductive health care. President Biden is also issuing a Presidential Memorandum to **protect and expand access to comprehensive reproductive health care**. The memorandum reflects the policy of the Biden-Harris Administration to **support women’s and girls’ sexual and reproductive health and rights in the United States, as well as globally**. Like memoranda issued by President Clinton and President Obama before him, it immediately rescinds the **global gag rule**, also referred to as the Mexico City Policy, which bars international non-profits that provide abortion counseling or referrals from receiving U.S. funding. In recognition of the additional work necessary to protect access to reproductive health care, President Biden’s memorandum also directs the Department of Health and Human Services to take immediate action to consider whether to rescind regulations under its Title X family planning program.

The presidential memorandum signed by President Biden on Thursday afternoon is addressed to the Secretary of State, the Secretary of Defense, the Secretary of HHS and the Administrator of the U.S. Agency for International Development (USAID). The memo stresses that “undue restrictions ... have made it harder for women to obtain necessary health care” and that the federal government “must take action to ensure that women at home and around the world are able to access complete medical information, including with respect to their reproductive health.” After reviewing the tortured history of the various iterations of the GGR under Republican presidents — and presidential memoranda issued by Democratic presidents rescinding them and providing the health and gender equality rationales for rescinding Trump’s expanded version today, especially now as the COVID-19 pandemic rages — the memo simply and directly declares: “The Presidential Memorandum of January 23, 2017 (The Mexico City Policy), is revoked.”

The leaders of the departments and agencies named in the presidential memorandum are instructed to “take all steps necessary to implement this memorandum, as appropriate and consistent with applicable law,” and to take a prescribed set of actions to modify the eligibility conditions imposed on U.S. global health assistance grantees, specifically to “immediately waive such conditions in any current grants; notify current grantees, as soon as possible, that these conditions have been waived; and immediately cease imposing these conditions on any future awards.” The urgency of the language used in the three directives makes crystal clear that the revocation of the GGR needs to be communicated to NGO partners and implemented as soon as possible.

Since USAID has been the only department or agency previously subjected to the GGR with regard to family planning and reproductive health assistance under Presidents Reagan and two Bushes, it is the only institution with experience reversing the GGR after the arrival of a new Democratic president. Regardless, there is no time for all of the named departments and agencies to waste on delivering a strong, clear and consistent message on the revocation of the GGR across the entirety of the U.S. global health project portfolio to minimize the potential for confusion and delayed implementation. This is particularly important for the undetermined number of non-U.S. NGOs that receive U.S. global health assistance from more than one U.S. government institution and for which funding mechanisms, terms and

time periods may differ. Departments and agencies also need to change the organizational mindsets and modus operandi they used under the previous administration to begin supporting implementing partners in building and improving the cost-effectiveness of their programs rather than wasting precious staff and financial resources seeking to root out rare instances of noncompliance with the GGR.

Being prepared and having been through this situation before on two previous occasions, USAID's intent is to send a global notification of the revocation of the GGR to both USAID staff in Washington, D.C. and in its overseas missions and implementing partners through their agency contacts and online notices portals as soon as possible — perhaps as early as today. However, USAID does not have direct contact with subrecipients of U.S. assistance and depends on its prime partners for proper communication and implementation of the waiver. In the near term, removing the GGR section of the standard provision included in existing grants and cooperative agreements that NGOs had to agree to abide by for the last four years is a high priority. This process will include both updating the agency's Automated Directives System (ADS) as well as amending the language in the actual individual assistance agreements between the agency and its grantees, which should occur as quickly as practicable and certainly when there is any modification to existing funding instruments. USAID's other efforts to communicate the waiver of the GGR include updating public materials and e-learning courses on the agency's website, which will seek to inform and educate stakeholders on the programmatic activities that are now permissible, including what statutory restrictions remain in effect. The other departments and agencies that have been implementing the GGR policy over the past four years and have no history with revocation should look to USAID. The Biden-Harris administration and the memo place the due diligence responsibility to revoke and understand and communicate this action squarely on them.

While the action of the Biden-Harris administration to revoke the GGR is an extraordinarily welcome and important first step, congressional champions answered this memorandum with a move that would repeal the policy permanently. By amending the Foreign Assistance Act of 1961, this newly introduced legislation would prevent a future president, hostile to SRHR, from unilaterally imposing the GGR through executive action and ending the use of the policy as a political football tossed back and forth between parties every four or eight years. The Global Health, Empowerment, and Rights (Global HER) Act, designed to enact a permanent repeal of the GGR into law, was introduced in the Senate by Senators Jeanne Shaheen (D-NH), Susan Collins (R-ME) and Lisa Murkowski (R-AK), who were joined by 44 of their colleagues. The companion House bill was led by Representatives [Barbara Lee \(D-CA\)](#), Ami Bera (D-CA) and Jan Schakowsky (D-IL), along with a record 171 additional cosponsors. The bill was endorsed by [132 organizations](#).

Apart from rescinding the GGR, yesterday's presidential memorandum directs the Secretary of State, "consistent with applicable law and subject to the availability of appropriations ... [to] take the steps necessary to resume funding the United Nations Population Fund." The announcement of the resumption of U.S. funding for UNFPA was enthusiastically welcomed by UNFPA Executive Director Dr. Natalia Kanem in a [statement](#). "The return of the United States as a major donor to UNFPA at this challenging time sends a message of hope to vulnerable women and girls everywhere. COVID-19 has put decades of hard-won progress at risk," Dr. Kanem shared. "With the support and solidarity of all our partners, I believe we can build back better and go even further to end needless deaths in childbirth, end violence against women and girls and make family planning available to all who want it."

A U.S. contribution of \$32.5 million was earmarked for UNFPA in the recently enacted fiscal year (FY) 2021 omnibus appropriations package, so funds are already available and specifically designated for the agency. In order to comply with applicable law, however, newly confirmed Secretary of State Antony Blinken will need to make a determination under the Kemp-Kasten amendment certifying that UNFPA does not "support or participate in the management of a program of coercive abortion or involuntary sterilization" in order to regain the agency's eligibility to receive any U.S. financial contribution. The Trump-Pence administration, like prior Republican administrations since 1985, had used UNFPA's miniscule program in China, where there have been human rights violations in pursuit of the government's demographic targets, as a pretext for blocking U.S. funding to the agency entirely. Informed sources suggest that such a State Department determination could be accomplished relatively quickly, perhaps by early to mid-March, which will allow the congressionally mandated funds to begin flowing to UNFPA.

The presidential memorandum also cryptically instructs the Secretary of State and the Secretary of HHS to "withdraw co-sponsorship and signature from the Geneva Consensus Declaration (Declaration) and notify other co-sponsors and signatories to the Declaration and other appropriate parties of the United States' withdrawal."

What might you ask is that all about? Well, this [declaration](#) was neither negotiated in Geneva nor is it a consensus declaration of the views of the international community beyond the 32 countries that agreed to endorse it. In reality, it is the Trump-Pence administration's vision for a global anti-abortion and "pro-family" strategy designed to counter and push back against previously agreed upon language from U.N. negotiations and statements. The former administration aimed to create a document that promotes a narrow definition of women's health and a heteronormative family structure, which, in the words of former Secretary of State Pompeo, "defends the unborn and reiterates the vital importance of the family." The GCD is part of a system that the Trump-Pence administration sought to build — both to reject and bypass U.N. agencies and multilateralism and to create an alternate channel for "consensus," redefining fundamental international agreements and principles. In a quickly issued [statement](#) acknowledging the presidential memorandum, Secretary of State Blinken declared that "the United States will withdraw co-sponsorship and signature from the Geneva Consensus Declaration in a timely and appropriate manner" and that "under President Biden's leadership, the United States is re-engaging multilaterally to protect and promote the human rights of all women and girls, consistent with the long-standing global consensus on gender equality and sexual and reproductive health and reproductive rights."

Last but not least, the presidential memorandum directs the Secretary of State to "work with the [USAID Administrator] and across the [U.S.] government foreign assistance program to ensure that adequate funds are being directed to support women's health needs globally, including sexual and reproductive health and reproductive rights." This directive should provide impetus for an increase in funding for bilateral and multilateral family planning and reproductive health programs being proposed as part of the Biden-Harris administration's first president's budget request for FY 2022, currently being prepared over at the Office of Management and Budget.

With regard to the [last-minute Trump chicanery](#) just before the inauguration, the former administration's proposed rule extending the GGR to global health contracts was not finalized despite being expedited, and the congressional hold on the reprogramming of withheld FY 2020 UNFPA funds remained in place. Unfortunately, with regard to the possibility of clawing back these UNFPA funds for the agency's use, State Department lawyers have reportedly advised that the FY 2020 funds are colored by then-Secretary of State Pompeo's June 2020 negative determination under the Kemp-Kasten amendment. However, the decision on how to repurpose the withheld funds will now be made by a USAID staffed by Biden appointees and by an untethered career technical staff, who hopefully will recommend using the funds cost-effectively in bilateral field programs to expand access to family planning and reproductive health care. In both cases, it is unclear why the remnants of the outgoing administration backed away from pursuing these final acts of vandalism. Perhaps because if the proposed contracts rule had been finalized, its implementation would have been blocked by a freeze on all proposed rules and regulatory actions put in place on day one pending a review by the Biden-Harris administration.

January 28 was a good day, but it is just the first day of many to come that are necessary to build back better for U.S. leadership on global SRHR after the four long years of chaos and destruction wrought by the Trump regime.