

Annex A: Excerpts from Abortion Restrictions Attached to United States Foreign Aid

- I. Excerpts from United States Agency for International Development regulations and contract provisions implementing abortion restrictions on grants to US non-governmental organizations, non-US non-governmental organizations, and foreign governments
- II. Evidence of US Department of State’s refusal to provide clear guidance to grantees on how to implement US abortion restrictions
- III. Summary of currently applicable congressional abortion restrictions on US foreign assistance
- IV. Additional congressional restrictions on the United Nations Population Fund preventing it from funding abortions with non-US funds

I. Excerpts from United States Agency for International Development regulations and contract provisions implementing abortion restrictions on grants to US non-governmental organizations, non-US non-governmental organizations, and foreign governments

United States Agency for International Development, Standard Provisions for U.S. Non-governmental Organizations, A Mandatory Reference for ADS Chapter 303, August 22, 2013



Standard Provisions for U.S. Nongovernmental Organizations

A Mandatory Reference for ADS Chapter 303

- d. Prohibition on Abortion-Related Activities:
 - (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and, (v) lobbying for or against abortion. The term "motivate," as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- b. Ineligible and Restricted Commodities and Services:
 - (1) Ineligible Commodities and Services. The recipient must not, under any circumstances, procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.



Standard Provisions for Non-U.S. Nongovernmental Organizations

A Mandatory Reference for ADS Chapter 303

Prohibition on Abortion-Related Activities:

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 - (vi) Weather modification equipment.

United States Agency for International Development, Acquisition and Assistance Policy Directive (AAPD) 08-01, Voluntary Population Requirements and Clause – Updated Requirements and Clause, June 12, 2008



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: June 12, 2008

AAPD 08-01

Voluntary Population Planning Activities – Updated Requirements and Clause

Subject Category: Acquisition Management
Type: POLICY

(b) *Prohibition on Abortion-Related Activities.*

(1) No funds made available under this contract will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

(2) No funds made available under this contract will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

(c) The contractor shall insert this provision in all subcontracts.

Limited Scope Grant Agreement (LSGA)

Title Page

Between the United States of America, acting through the United States Agency for International Development ("USAID")

and

The Government of _____ ("Grantee")

1. Activity Title: _____.
2. USAID Activity Number: _____.
3. Purpose: USAID and the Grantee hereby agree to carry out the Activity described in this Agreement in accordance with (a) the terms of this Agreement and (b) any general agreement between the two governments regarding economic or technical cooperation [optional: title of the governing agreement].
4. USAID Contribution: USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee U.S.\$ _____ (the "Grant") to be expended as described herein.

Article P: Voluntary Family Planning.

[Agreement Language]

The Parties agree that all USAID funds provided under this Agreement shall be used in accordance with applicable United States policy and statutory requirements relating to voluntary family planning projects, and that none of the USAID funds provided under this Agreement, or goods or services financed by such funds, may be used for:

- (a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;
- (b) the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; or
- (c) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a method family planning.
- (d) USAID will issue implementation letters that more fully describe the requirements of this section.

United States Agency for International Development, Development Objective Agreement and Bilateral Project Agreement Template (non-health), A Mandatory Reference for ADS Chapters 350 and 220, July 22, 2014



Development Objective Agreement and Bilateral Project Agreement Template

(d) Abortion restrictions

(1) None of the USAID funds provided under this Agreement shall be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate women to have abortions; (iii) payments to persons to perform abortions or to solicit women to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for abortion.

Section F.2. Abortion and Involuntary Sterilization Restrictions. [Include in any Agreement that finances any democracy and governance activities that will support constitutional or any health-related legislative reform.]

(a) Funds made available under this Agreement must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

(b) No funds made available under this Agreement will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

II. Evidence of US Department of State's refusal to provide clear guidance to grantees on how to implement US abortion restrictions

United States Government Accountability Office, Report to Congressional Requesters. Foreign Assistance: Clearer Guidance on Compliance Overseas with Legislation Prohibiting Abortion-Related Lobbying, October 2011

Department of State Comments on GAO Draft Report

FOREIGN ASSISTANCE: Clearer Guidance Needed on Overseas Compliance with Legislation Prohibiting Abortion-Related Lobbying (GAO-12-35, GAO Code 320828)

Thank you for the opportunity to comment on your draft report entitled *Foreign Assistance: Clearer Guidance Needed on Overseas Compliance with Legislation Prohibiting Abortion-Related Lobbying*.

Recommendation: To help ensure the actions of U.S. officials and implementing partners comply with the legislative prohibition against using certain U.S. assistance funds to lobby for or against abortion, we recommend that the Secretary of State and the USAID Administrator develop specific guidance on compliance with the Siljander Amendment, indicating what kinds of activities may be prohibited, disseminate this guidance throughout their agencies, and make it available to award recipients and subrecipients.

Response: The Department of State concurs with this recommendation only in part. The Department agrees it would be useful to inform State Department employees of the restriction so that they can seek appropriate guidance from the relevant Department policy and legal offices as to whether their proposed activities, including activities executed through grants and contracts, are subject to this funding restriction and will undertake to disseminate such information within the Department. The Department does not agree that disseminating specific guidance indicating what kinds of activities may be prohibited is appropriate. Determining whether activities are prohibited requires an understanding of the specific facts of any particular case. As general guidance cannot foresee all the relevant facts, it could result in activities being undertaken in reliance upon the guidance without specific legal review by the Department. The Department prefers to take steps to broaden awareness of the provision and have individuals seek advice on a case-by-case basis.

III. Summary of currently applicable congressional abortion restrictions on US foreign assistance

Helms Amendment (1973)

“None of the funds made available to carry out [Part 1 of the Foreign Assistance Act] may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.”

Source: Section 104(f)(1) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(1)), as amended by the Foreign Assistance Act of 1973 (P.L. 93-189), approved December 17, 1973.

Siljander Amendment (1981)

“None of the funds made available under this Act may be used to lobby for or against abortion.”

Source: Consolidated Appropriations Act 2014

Leahy Amendment (1994)

“[F]or the purposes of this or any other Act authorizing or appropriating funds for the Department of State, foreign operations, and related programs, the term “motivate,” as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.”

Source: Consolidated Appropriations Act 2014

IV. Additional congressional restrictions on the United Nations Population Fund preventing it from funding abortions with non-US funds

Excerpt from the H.R.3547 - Consolidated Appropriations Act, 2014: United Nations Population Fund

UNITED NATIONS POPULATION FUND

SEC. 7063. (a) CONTRIBUTION.—Of the funds made available under the heading “International Organizations and Programs” in this Act for fiscal year 2014, \$35,000,000 shall be made available for the United Nations Population Fund (UNFPA).

(b) AVAILABILITY OF FUNDS.—Funds appropriated by this Act for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to the “Global Health Programs” account and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

(c) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available by this Act may be used by UNFPA for a country program in the People’s Republic of China.

(d) CONDITIONS ON AVAILABILITY OF FUNDS.—Funds made available by this Act for UNFPA may not be made available unless—

- (1) UNFPA maintains funds made available by this Act in an account separate from other accounts of UNFPA and does not commingle such funds with other sums; and
- (2) UNFPA does not fund abortions.