

What You
Need To Know
About the

Mexico City Policy Restrictions

On U.S. Family
Planning
Assistance

An Unofficial Guide



Population Action
INTERNATIONAL

What You Need To Know About the Mexico City Policy Restrictions On U.S. Family Planning Assistance

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On January 22, 2001 — his second day in office — President George W. Bush announced the reinstatement of the restrictions on overseas health care organizations in effect during the mid-1980s and early 1990s, commonly known as the “Mexico City Policy.” The policy reversal has had serious ramifications for U.S. support for international family planning and reproductive health programs around the world.

The restrictions prohibit U.S. family planning assistance from being provided to foreign non-governmental organizations (NGOs) that use funding from any other source to perform abortion in cases other than a threat to the life of the woman, rape or incest; to provide counseling and referral for abortion; or to lobby to make abortion legal or more available in their own country.

U.S. NGOs can continue to perform, counsel, refer or advocate on abortion with funds from non-U.S. government sources without risking their eligibility to receive U.S. family planning assistance. **The only requirement imposed on U.S. NGOs by the Mexico City Policy restrictions is the responsibility to enforce the policy on their foreign NGO partners.**

On March 28, 2001, President Bush formally issued restrictions virtually identical to those included in all NGO grants and cooperative agreements between 1985 and 1993 with one important clarification concerning post-abortion care. The presidential memorandum explicitly states that “any restrictions do not limit organizations from treating injuries and illnesses caused by legal or illegal abortions.”

The legal language used by the U.S. Agency for International Development (USAID) to implement the

The only requirement imposed on U.S. NGOs by the Mexico City Policy restrictions is the responsibility to enforce the policy on their foreign NGO partners.

Mexico City Policy — called the “standard provisions” — requires foreign NGOs to certify that they do not “perform or actively promote abortion as a method of family planning” as a condition of receiving U.S. family planning assistance and will not do so while receiving such assistance. The longstanding prohibition on the direct use of U.S. foreign aid funds for most abortion-related activities (the 1973 Helms Amendment) remains in effect. *[See checklist for additional details.]*

Foreign family planning and reproductive health NGOs can engage in certain types of abortion-related activities and still remain eligible for U.S. population assistance. This brochure seeks to clarify the specific restrictions imposed by the policy in order to protect and preserve critical, life-saving reproductive health care services from an unnecessarily broad interpretation of what the standard provisions do and do not require.

None of the information contained in this brochure should be interpreted as an explicit or implied endorsement on the part of Population Action International, its Board of Directors, or staff of the Mexico City Policy or its implementation by the U.S. government.

Foreign NGOs receiving USAID family planning assistance under a grant or cooperative agreement must sign the provisions and abide by the restrictions.

Non-Governmental Organizations Subject to the Policy

Foreign NGOs receiving USAID family planning assistance — either through a USAID country mission, a U.S. cooperating agency, or an indigenous partner organization — under a grant or cooperative agreement must sign the provisions and abide by the restrictions. Assistance is defined to include not just funds but the provision of technical assistance, customized training, and commodities, including contraceptive supplies.

The restrictions apply to USAID family planning assistance regardless of which USAID account is the source of the funds. The restrictions do not apply to non-family planning

assistance. *[See chart for additional details.]* A foreign NGO that provides family planning services — but receives only non-family planning assistance from USAID (e.g., HIV/AIDS, child survival or health assistance) — is not subject to the requirements even if that organization would be ineligible to receive USAID family planning assistance as a result of the restrictions.

Private clinics or hospitals that perform abortions but that “do not include abortion in their family planning programs” may still have to sign the provisions, but may be able to continue to perform abortions in other parts of their facilities and still remain eligible for USAID family planning assistance.

Non-Governmental Organizations NOT Subject to the Policy

A foreign organization that only provides purchased goods or services (e.g., computer support, management or evaluation services) is not required to sign the provisions. Also exempted from signing are organizations that have an individual participating in the “general training program” of a USAID-funded organization (i.e., a training activity involving participants from multiple organizations not specifically tailored to the particular organization).

Exemption for Foreign Governments, Multilaterals

Health and family planning services provided under the auspices of foreign governments are exempt from the Mexico City Policy. If public sector programs furnish abortion “as a method of family planning” or engage in other prohibited abortion-related activities, governments are required to keep U.S. population assistance in a segregated account to ensure that no U.S. funds are used for these prohibited activities.

Health and family planning services provided under the auspices of foreign governments are exempt from the Mexico City Policy.

Moreover, medical equipment purchased with U.S. funds as well as facilities supported by U.S. funds may not be used to provide abortion services.

The exemption for foreign governments also applies to government-operated universities and hospitals, including, for example, medical schools and teaching hospitals which provide abortion services as part of comprehensive health care or which engage in abortion-related research.

The exemption also applies to government-sponsored population or family planning councils, which are free to engage in research; disseminate public information about the incidence, causes or consequences of unsafe abortion; and participate in the development of national policies related to abortion.

Similarly, multilateral organizations such as the World Health Organization and the United Nations Population Fund (UNFPA) are exempt from the Mexico City Policy.

Individual Versus Organizational Action

The restrictions apply to organizations, not individuals. An individual associated with a foreign NGO subject to the policy may engage in activities in their private capacity that would be prohibited if carried out by the organization itself. An individual may engage in such otherwise restricted activities so long as the organization does not endorse or fund them and “reasonable steps” are taken to ensure that the individual does not “improperly represent” that he or she is acting on behalf of the organization. *[See also the exception for training of NGO-affiliated individuals described above.]*

Technical Assistance

A technical assistance relationship between organizations implies a sustained and substantial relationship in which skills are transferred. Ad hoc interactions between organizations

(e.g., visits, consultations, data collection or interviews) should not be subject to the restrictions under this interpretation.

Provision of Emergency Contraception

The policy does not — nor does any other USAID policy — prohibit foreign NGOs from providing emergency contraception (EC) as part of the family planning and reproductive health services they offer. U.S. and foreign NGOs receiving USAID family planning assistance may provide EC counseling, dispense EC pills and promote awareness of this contraceptive method in accordance with local laws and policies. However, dedicated EC pill products currently on the market are not on USAID’s list of essential drugs and are not provided to either U.S. or foreign NGOs with U.S. funds. For more information about EC and available regimens, see PAI’s brochure, *Emergency Contraception and the Global Gag Rule: An Unofficial Guide* (http://www.populationaction.org/resources/publications/globalgagrule/EmergencyContraception_final.pdf).

The policy does not prohibit foreign NGOs from providing emergency contraception (EC) as part of the family planning and reproductive health services they offer.

Performance of Abortion for Life Endangerment, Rape or Incest

Foreign NGOs do not risk losing USAID assistance if they perform abortion in cases where “the life of the mother would be endangered if the fetus were carried to term” or “following rape or incest.” Under the terms of the policy, abortions performed for any other reason or circumstance would be forbidden.

The mere possession of equipment for vacuum aspiration or dilation and curettage (D&C) or of drugs for menses induction for use in cases of threat to life, rape or incest would not disqualify an organization for USAID support. However, no USAID family planning funds may be used to

procure or distribute equipment for the purpose of inducing abortions in cases other than those listed above.

Counseling and referral for abortion in cases of threat to the life of the woman, rape or incest is permissible.

Counseling and Referral for Abortion

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In countries where abortion is legal for reasons broader than life endangerment, rape or incest, open communication between women and their health care providers is severely restricted by the Mexico City Policy. Counseling and referral for abortion is permitted in those countries only if all four of the following conditions are met:

- ▲ The woman is already pregnant;
- ▲ The woman “clearly states that she has already decided” to have an abortion;
- ▲ The woman “specifically asks” where a safe, legal abortion may be obtained; and
- ▲ The family planning counselor has reason to believe that the country’s medical ethics require him or her to provide a referral for a safe, legal abortion.

Training and Equipment to Treat Post-Abortion Complications

U.S. government policy, as reaffirmed by the presidential memorandum, encourages foreign NGOs to provide “treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.” Organizations are urged to provide treatment for post-abortion complications (e.g., septic or incomplete abortions) themselves or to assist clients in getting treatment (e.g., by accompanying a woman to a hospital). USAID considers such conditions potentially life-threatening.

USAID assistance may be used to support the training of health care workers in post-abortion care, the treatment itself, and other related technical assistance. But as a matter of

agency policy, USAID funds may not be used to purchase manual vacuum aspiration (MVA) kits. However, there are no restrictions on using the matching funds many NGOs must raise and contribute to satisfy USAID cost-sharing requirements to purchase MVA kits or other supplies for the purpose of post-abortion care.

Post-Abortion Contraceptive Counseling and Services

NGOs may receive USAID assistance to provide contraceptive counseling and services to women who have had spontaneous or induced abortions, including illegal abortions. Organizations may communicate and coordinate activities with any other foreign NGOs, including abortion service providers, in order to facilitate post-abortion contraceptive or reproductive health services.

Biomedical Research on Abortion

Under a 1981 legislative prohibition enacted by Congress, organizations — both foreign and domestic — may still not use U.S. funds to engage in biomedical research on abortion. NGOs, however, may use funds obtained from other sources to do such research.

Demographic and Health Research on Abortion

Foreign NGOs do not risk their eligibility for USAID family planning assistance if they engage in research on the subject of abortion. In addition to keeping routine information on clients' abortion histories, organizations may collect information on the general incidence of abortion and its causes, on the health impact of illegal abortion including

Foreign NGOs do not risk their eligibility for USAID family planning assistance if they engage in research on the subject of abortion.

related deaths and injuries, and on its cost to the health care delivery system. These types of epidemiological or descriptive research can be supported with USAID assistance.

A NGO receiving USAID funding may not itself use the results of this research (whether the research is funded by USAID or not), or any other research, to lobby for the legalization of abortion or continuation of abortion laws with exceptions broader than life of the woman, rape or incest. But the organization's eligibility for USAID support is not jeopardized merely by participating in research that others may use in advancing abortion law reform.

Lobbying

Foreign NGOs receiving USAID family planning assistance may not lobby their government to legalize or to “continue the legality” of abortion for reasons other than to save the life of the woman, rape or incest.

In addition, foreign NGOs receiving USAID family planning assistance may not conduct “a public information campaign . . . regarding the benefits and/or availability of abortion” except in cases of life endangerment, rape or incest. However, the policy does not preclude the use of demographic and health research on abortion described above by certain NGOs (such as a U.S. NGO or a foreign NGO which does not receive USAID assistance) to lobby foreign governments to legalize abortion.

The Mexico City Policy does not apply to HIV/AIDS assistance from the U.S. government.

Provision of HIV/AIDS Services

The Mexico City Policy does not apply to HIV/AIDS assistance from the U.S. government. Foreign NGOs providing HIV/AIDS services are eligible to receive U.S. HIV/AIDS assistance, regardless of their eligibility to receive U.S. family planning assistance.

For example, foreign NGOs that refused the terms of the Mexico City Policy restrictions and no longer receive U.S. family planning assistance are eligible to receive U.S. HIV/AIDS assistance — from the President's Emergency

Plan for AIDS Relief (PEPFAR) or any other U.S. government source of HIV/AIDS assistance. Similarly, the policy does not apply to U.S.-donated condoms and other supplies, equipment, and technical assistance provided with HIV/AIDS assistance. U.S. and foreign NGOs receiving U.S. HIV/AIDS assistance may engage in lawful abortion-related activities with their private, non-U.S. funds.

NGOs need to be aware of and understand newer eligibility requirements governing U.S. HIV/AIDS assistance. In particular, both U.S. and foreign NGOs must ensure that no U.S. funds are used “to promote or advocate the legalization or practice of prostitution or sex trafficking” and must have an organizational “policy explicitly opposing prostitution and sex trafficking” in order to be eligible to receive U.S. HIV/AIDS or anti-trafficking assistance. For more information about this and related U.S. HIV/AIDS policies, see PAI’s brochure, *What You Need to Know About the Global Gag Rule and U.S. HIV/AIDS Assistance: An Unofficial Guide* (http://www.populationaction.org/resources/publications/globalgagrule/GagRule_AIDS/GGRandHIV-AIDS_brochure.pdf).

Further Information

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

For the full text of the Mexico City Policy 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 via the Internet on the USAID website at http://www.usaid.gov/procurement_bus_opp/procurement/cib/.

For the comments of the White House in announcing the reinstatement of the policy, see U.S., Executive Office of the President, “Restoration of the Mexico City Policy,” (Statement by the White House Press Secretary), 22 January 2001. Available via the Internet on the White House website at <http://whitehouse.gov/news/releases/20010123.html>.

For the full text of the standard provisions in USAID agreements with NGOs, see U.S., USAID, “Voluntary Population Planning (March 1999)” section (page 32) contained in “Mandatory Standard Provisions for Non-U.S., Nongovernmental Recipients.” Available via the Internet on the USAID website at <http://www.usaid.gov/policy/ads/300/303mab.pdf>.

For current legislative restrictions on USAID population assistance, see the FY 2006 Foreign Operations, Export Financing, and Related Appropriations Act, Public Law 109-265. Available via the Internet on the U.S. Government Printing Office website at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=fhr265.109.pdf.

For an earlier interpretation of the restrictions that still guides USAID’s application of the current policy, see “Supplemental Deposition of Duff G. Gillespie” (Director of the USAID Office of Population) in *Pathfinder Fund, et al., v. AID*, 746 F.Supp. 192 (U.S. District Court, District of Columbia, 1990).

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 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*, June 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 05-04 (Revised)], 9 June 2005. Available via the Internet on the USAID website at http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_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 family planning assistance, organizations should write directly to:

Office of Population/Reproductive Health
Global Health Bureau
3rd Floor, RRB
U.S. Agency for International Development
Washington, DC 20523-3600 USA

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 Mexico City Policy, please write to:

Public Policy & Strategic Initiatives
Population Action International
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 struggling to interpret the policy and to make the decision whether to accept USAID family planning assistance with the provisions or to reject USAID family planning assistance because of the Mexico City Policy restrictions, include:

EngenderHealth – www.engenderhealth.org

International Planned Parenthood Federation –
www.ippf.org

Ipas – www.ipas.org

Pathfinder International – www.pathfind.org

Do the Mexico City Policy Provisions Apply?

YES

NO

Assistance Instruments

- ▲ Grants
- ▲ Cooperative agreements
- ▲ Grants under contracts

- ▲ Contracts
- ▲ Sub-grants from a foreign host government
- ▲ Purchase orders

Assistance Accounts

- ▲ USAID family planning assistance from any account

- ▲ U.S. HIV/AIDS assistance
- ▲ USAID child survival assistance (including for child spacing under certain specific conditions)
- ▲ USAID health assistance
- ▲ USAID non-family planning population assistance (e.g., female genital mutilation activities)

Types of Support

- ▲ Funding
- ▲ Technical assistance
- ▲ Commodities (contraceptives)
- ▲ Fellowships

- ▲ Loans
- ▲ Minimal contracts of limited duration (e.g., consultations, interviews, data collection, publications)
- ▲ Purchased goods or services (e.g., computer, management, evaluation services)

Recipients of Support

- ▲ NGO-affiliated individuals acting in the name of the NGO
- ▲ NGO-affiliated individuals participating in customized training designed specifically for the organization

- ▲ NGO-affiliated individuals acting in their private capacities
- ▲ NGO-affiliated individuals participating in a “general training program”

Foreign NGOs are required to sign the provisions as part of any new grant or cooperative agreement issued after February 15, 2001. NGOs funded under contracts are exempt. This exemption applies except in the special case of a sub-grant to an organization provided under a contract. Also exempt are foreign NGOs receiving sub-grants from a foreign host government.

Permissible Activities Under Mexico City Policy

The Unofficial Guide Checklist

Type of Activity	Foreign NGO		U.S. NGO	
	USAID Assistance For Family Planning	NON-U.S. Assistance	USAID Assistance For Family Planning	NON-U.S. Assistance
Performance of abortion				
Perform abortion in cases of threat to the life of the woman, rape, or incest	✓	✓	✓+	✓+
Perform abortion for other indications including broad health grounds (physical & mental), fetal deformity, and socioeconomic or on request				✓+
Counseling & Referral				
Counsel or refer on abortion, if legal	*	*	✓	✓
Post-abortion contraceptive counseling, referral & services	✓	✓	✓	✓
Lobbying				
Lobby a foreign government to legalize or to “continue the legality” of abortion for reasons other than life, rape, or incest				✓
Conduct a “public information campaign...regarding the benefits and/or the availability of abortion				✓

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The Unofficial Guide Checklist

Type of Activity	Foreign NGO		U.S. NGO	
	USAID Assistance For Family Planning	NON-U.S. Assistance	USAID Assistance For Family Planning	NON-U.S. Assistance
Post-abortion care				
Purchase or distribute manual vacuum aspiration (MVA) kits		✓		✓
Acquire or provide training of medical personnel in the treatment of post-abortion complications (e.g., septic or incomplete abortions)	✓	✓	✓	✓
Provide assistance to strengthen logistics systems that include MVA kits for post-abortion care	✓	✓	✓	✓
Research				
Conduct biomedical research on abortion		✓		✓
Engage in demographic, epidemiological, or social science research on abortion	✓	✓	✓	✓

KEY

- ✓ Activity permitted under either the 1973 Helms amendment, the MCP or other applicable statutory or policy restrictions.
- ✓+ Activity permitted under current law and policy, but it remains unclear whether or how often (if ever) a U.S. NGO would directly provide services to clients without relying on a foreign NGO partner as an intermediary.
- * Activity permitted only under certain very specific conditions (see text of brochure for more detailed discussion) or permissibility of the activity remains unclear under the laws and policies governing USAID programs.

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.



Population Action INTERNATIONAL

1300 19th Street, NW, Second Floor
Washington, DC 20036 USA
tel • 202.557.3400 | fax • 202.728.4177
www.populationaction.org

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