

Introduction

U.S. assistance is governed by statutory restrictions (such as the Helms and Siljander Amendments) as well as policy restrictions (such as Protecting Life in Global Health Assistance).

The purpose of this course is to provide an overview of these restrictions. By the end of this course, participants will:

- Have increased knowledge of Protecting Life in Global Health Assistance and understand its application to U.S. global health assistance
- Have increased knowledge of the statutory abortion restrictions and understand their application to U.S. foreign assistance
- Be able to describe actions for ensuring compliance with Protecting Life in Global Health Assistance and the statutory abortion restrictions
- Know who to contact for further information and how to access resource materials

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Audience

The primary audience for this course is persons who manage or implement USAID-supported health activities, including staff working with PEPFAR programs; however, it may also be informative for persons managing or implementing other programs that are integrated with health (for example, water and sanitation programs and nutrition-integrated agriculture programs).

In particular, the statutory abortion restrictions apply to all U.S. foreign assistance funds, not just health activities.

It is important for U.S. Agency staff, host government counterparts, and implementing partners to be knowledgeable about all of the restrictions because:

- If you implement activities with U.S. assistance funds, you are obligated to respect the laws and policies that apply to that assistance. While Protecting Life in Global Health Assistance applies to foreign non-governmental organizations (NGOs) receiving U.S. global health assistance, the statutory abortion restrictions apply to all U.S. foreign assistance funds.

- USAID takes compliance with all of the abortion restrictions very seriously.
- Increased familiarity with the restrictions will improve your ability to monitor compliance in your programs.
- If you encounter a problem in a USAID-supported activity, you should know what to do.

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Structure

The course is organized as follows:

- Introduction: Provides an overview of the restrictions
- Protecting Life in Global Health Assistance: Reviews in detail the conditions and applicability of the policy
- Statutory Abortion Restrictions: Reviews the Helms Amendment and other abortion-related statutory restrictions
- Ensuring Compliance: Discusses actions you can take to make sure all partners and staff are aware of the restrictions, illustrative monitoring activities, and steps to take if you suspect a problem
- Case Study: Presents a case study that will help you apply what you have learned

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Summary of Applicability of the Abortion Restrictions

Statutory Abortion Restrictions (Helms, Leahy, Siljander, and Biden Amendments)	Protecting Life in Global Health Assistance Policy
Apply to any kind of entity that receives U.S. foreign assistance , including U.S. non-governmental organizations (NGOs), foreign NGOs, public international organizations and governments	Applies to foreign NGOs receiving U.S. government global health assistance
Apply to U.S. Government funded-activities	Applies to a foreign NGO’s activities as a whole, not only activities funded by the U.S. Government

As described in more detail in the course, both the statutory and policy restrictions are set forth in standard provisions included in USAID agreements:

- For the statutory abortion restrictions, a mandatory standard provision entitled “Voluntary Population Planning Activities - Mandatory Requirements (May 2006)” is included in all USAID contracts, cooperative agreements, and grants, regardless of the nature of the activity.
- For the policy restriction, USAID issued a standard provision entitled “Protecting Life in Global Health Assistance (May 2019)” for inclusion in cooperative agreements and grants that include global health assistance.

The standard provisions can be found here:

- [Standard Provisions for U.S. NGOs](#)
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- Spanish ([U.S. NGOs](#) | [Non-U.S. NGOs](#)), Arabic ([U.S. NGOs](#) | [Non-U.S. NGOs](#)), and French ([U.S. NGOs](#) | [Non-U.S. NGOs](#)) translations of the Standard Provisions

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Protecting Life in Global Health Assistance

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Overview

On January 23, 2017, President Trump signed a Presidential Memorandum relating to the Mexico City Policy, now known as Protecting Life in Global Health Assistance.

The Presidential policy requires foreign non-governmental organizations to agree, as a condition of receiving global health assistance, that they will not perform or actively promote abortion as a method of family planning or provide financial support to any other foreign non-governmental organization that conducts such activities.

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Background

In 1984, President Reagan implemented the Mexico City Policy, which required foreign nongovernmental organizations (NGOs) to agree, as a condition of receiving USAID family planning assistance, that they would not perform or actively promote abortion as a method of family planning or provide financial support to any other foreign NGO that conducted such activities. This Presidential policy remained in effect until President Clinton rescinded it in January 1993. It was restored in its original form by President Bush from 2001 to 2009, and rescinded by President Obama in 2009.

On January 23, 2017, President Trump signed a Presidential Memorandum relating to the Mexico City Policy, now known as Protecting Life in Global Health Assistance. The first paragraph of the January 23, 2017, Presidential Memorandum reinstated the 2001 Presidential Memorandum on the Mexico City Policy for USAID family planning assistance.

The second paragraph of the Presidential Memorandum directed the Secretary of State, in coordination with the Secretary of Health and Human Services, to the extent allowable by law, to implement a plan to extend the requirements of the reinstated 2001 Memorandum to global health assistance furnished by all departments or agencies.

On May 9, 2017, the Secretary of State approved a plan under which U.S. Government Departments and Agencies will apply the requirements of the Mexico City Policy to foreign NGOs that receive global health assistance. The requirements of the expanded policy, now known as "Protecting Life in Global Health Assistance," are described in detail in this course.

Did you know?

Protecting Life in Global Health Assistance is a policy requirement, not a law. Policy requirements reflect the Administration's priorities and implementation guidance. They may change under new leadership or for other reasons. Compliance is mandatory for both policy and legal requirements.

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Policy conditions

Protecting Life in Global Health Assistance requires foreign non-governmental organizations (NGOs) to agree, as a condition of receiving global health assistance, that they will not perform or actively promote abortion as a method of family planning or provide financial support to any other foreign NGO that conducts such activities.

The next portion of this module will review the applicability of the policy, and then the policy's conditions will be discussed in greater detail.

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The original Mexico City Policy restrictions applied to foreign NGOs receiving USAID assistance for **family planning**. Protecting Life in Global Health Assistance now applies to foreign NGOs as a condition for receiving U.S. government **global health assistance**.

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Applicability: Which kinds of assistance does Protecting Life in Global Health Assistance apply to?

The expanded policy applies to global health assistance, which encompasses funding used predictably for international health activities with a primary purpose or effect of benefiting a foreign country.

For USAID, this means all global health programs, including HIV/AIDS, maternal and child health, infectious diseases (including malaria, tuberculosis, neglected tropical diseases, and Zika), global health security, and family planning and reproductive health.

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.

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Did You Know?

The USAID standard provision that implements the Protecting Life in Global Health Assistance (PLGHA) policy includes an applicability statement to ensure the provision is included in assistance awards that include global-health assistance. For USAID, this means the policy applies to awards with health funding from the Global Health Programs (GHP), Economic Support Fund (ESF), and Assistance for Europe, Eurasia, and Central Asia (AEECA) or successor accounts that are

reported on under the “Health” category of the Foreign Assistance Standardized Program Structure, except:

- Water activities reported under program area HL.8, “Water Supply and Sanitation”;
- The American Schools and Hospitals Abroad Program; or
- The Food for Peace program.

The policy does not apply to any activities programmed under categories other than the Health category of the Foreign Assistance Standardized Program Structure.

Protecting Life in Global Health Assistance does not apply to humanitarian and disaster assistance.

The Protecting Life in Global Health Assistance standard provision is not included in agreements funded exclusively with Development Assistance (DA) account funds. However, the standard provision must be included in integrated awards that include any funding for global health assistance.

Highlight

Protecting Life in Global Health Assistance covers the provision of funds, commodities or equipment to, or implemented by, a foreign non-governmental organization.

[Applicability: Which entities does Protecting Life in Global Health Assistance apply to?](#)

Protecting Life in Global Health Assistance applies to foreign NGOs that receive global health assistance. A foreign NGO is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State or Territory of the United States, the District of Columbia, or Puerto Rico.

U.S. NGOs are not subject to the terms of the policy, but U.S. NGOs are required to pass down the policy’s requirements to foreign NGO sub-recipients that receive global health assistance.

Protecting Life in Global Health Assistance **does not** apply to foreign governments, public international organizations (such as the World Health Organization), or other multilateral entities in which sovereign nations participate (such as the Global Fund to Fight AIDS, Malaria, Tuberculosis, and Gavi, the Vaccine Alliance).

Did you know?

Foreign NGOs are not required to sign a separate certification; their agreement to comply with Protecting Life in Global Health Assistance is indicated by signing their agreement with the standard provision included.

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Under the plan approved by the Secretary of State, Protecting Life in Global Health Assistance applies to grants, cooperative agreements, and contracts that provide global health assistance.

For grants and cooperative agreements, USAID has been implementing the PLGHA policy through a standard provision that was originally issued in May 2017. The standard provision was revised in May 2019 to reflect intended actions from the 2018 PLGHA Six-Month Review.

This May 2019 provision will be included in:

- (a) all new grants and cooperative agreements that provide global health assistance; and
- (b) any existing grants and cooperative agreements that provide global health assistance that have not yet received any version of the PLGHA standard provision, when such agreements are amended to add new funding; and
- (c) any existing grants and cooperative agreements that provide global health assistance that have previously received the May 2017 PLGHA standard provision, when such agreements are amended to add new funding, or as soon as practicable.

For contracts, the Administration is developing a corresponding clause for all U.S. government departments and agencies to include in certain types of contracts for global health assistance. The policy will not cover contracts until the completion of a rule-making process. However, the policy does cover grants under contract at this time. This course will be updated when guidance is available related to contracts.

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Applicability: Which of the foreign NGO's activities does Protecting Life in Global Health Assistance apply to?

A key element of the Protecting Life in Global Health Assistance (PLGHA) policy is that it applies to the activities of an **organization as a whole**, not only to U.S. funded activities. A foreign NGO receiving USG global health assistance may not perform or actively promote abortion as a method of family planning with funds from **any** source (including funds from other donors or institutional funds).

The standard provision requires that, prior to entering into an agreement to furnish global health assistance to a foreign NGO subrecipient, a recipient of U.S. global health assistance must ensure such agreement with the foreign NGO subrecipient includes the standard provision.

Additionally, foreign NGOs that receive U.S. global health assistance should take steps to ensure that they are not providing financial support, with any source of funds and for any purpose, to another foreign NGO that performs, or actively promotes, abortion as a method of family planning. This requirement applies to financial support that a foreign NGO implementing partner provides under new financial arrangements. It also applies to a foreign NGO's existing financial arrangements, unless the partner is legally obligated to provide additional funding under the arrangement.

Foreign NGOs may take a variety of steps to ensure compliance with the "financial support" requirement. This due diligence could include, for example, meeting with funding recipients and reviewing publicly available information about their activities. Recipients are responsible for determining the steps needed to ensure compliance with the standard provision.

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Additionally, foreign NGOs that receive U.S. global health assistance should take steps to ensure that they are not providing financial support, with any source of funds and for any purpose, to another foreign NGO that performs, or actively promotes, abortion as a method of family planning. This requirement applies to financial support that a foreign NGO implementing partner provides under new financial arrangements. It also applies to a foreign NGO's existing financial arrangements, unless the partner is legally obligated to provide additional funding under the arrangement.

Foreign NGOs may take a variety of steps to ensure compliance with the "financial support" requirement. This due diligence could include, for example, meeting with funding recipients and reviewing publicly available information about their activities. Recipients are responsible for determining the steps needed to ensure compliance with the standard provision.

Key definitions

The standard provision implementing the policy includes a number of key definitions:

"Furnish health assistance" includes the transfer of funds or goods financed with such funds, but **does not include**:

- the provision of technical assistance or training (including other costs for individuals directly related to such technical assistance or participation in training), unless such organization receives a sub-award of U.S. global health assistance funds under this award;
- the purchase of goods or services from an organization.

Prime recipients, both U.S. NGOs and foreign (non-US) NGOs, must flow down the Protecting Life in Global Health Assistance standard provision to foreign NGOs to which they furnish global health assistance, which includes funds or goods (e.g., commodities or equipment) financed with such funds.

Additional information: Under the May 2019 standard provision, foreign NGOs that **receive only in-kind training and technical assistance** will not be required to agree to the terms of the PLGHA policy.

However, the policy will continue to apply to foreign NGOs that receive an award or sub-award (grant or cooperative agreement) of global health assistance funds, or goods financed with such funds.

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Key definitions (Cont'd)

“Abortion as a method of family planning”: Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to:

- Abortions performed for the purpose of spacing births
- Abortions performed for the physical or mental health of the mother
- Abortions performed for fetal abnormalities
- Menstrual regulation

Abortion as a method of family planning **does not include** abortions performed:

- if the life of the mother would be endangered if the fetus were carried to term
- abortions performed following rape or incest.

“To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

“To actively promote abortion” includes but is not limited to the following:

- Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information regarding the benefits and/or availability of abortion as a method of family planning;
- Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (excluding passive referral);
- Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and
- Conducting a public information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

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Referrals for abortion need to be carefully considered as they pose a serious vulnerability with regard to the Protecting Life in Global Health Assistance policy.

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Exceptions

Certain Referrals: While referrals are generally considered “active promotion of abortion as a method of family planning” under the policy, there are certain exceptions to this. First, passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion **if all of the following conditions are met:**

- A woman who is already pregnant specifically asks the question,
- She clearly states that she has already decided to have a legal abortion, and
- The health care provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally.

Second, as noted previously, excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term.

Postabortion Care (PAC): The policy **does not prohibit** the treatment of injuries or illnesses caused by legal or illegal abortions, for example, postabortion care (PAC). USAID defines PAC to encompass:

- Emergency treatment for complications of induced or spontaneous abortion
- Counseling on and provision of FP options
- Community empowerment through community awareness and mobilization

Affirmative Duty of Health Care Provider: In countries where the provider is **required** by local law to provide counseling about or referrals for abortion as a method of family planning, compliance with such law does not trigger a violation of the policy. This exception does not apply where the provider is allowed, but not required, by local law to provide such counseling or referrals.

Staff should carefully consider how any activities carried out under the above exceptions are documented.

Did you know?

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It is important to keep in mind that the issue of abortion can arise outside the service delivery context, for example, in areas such as:

- Constitutional or other legislative reform

- Policy and advocacy activities
- Technical or policy meetings, working groups, symposiums, and conferences
- Activities to strengthen health systems

It is important to consider how the statutory and policy restrictions relate to your program and employ effective strategies for ensuring compliance ([see Section IV](#)).

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Leahy Amendment

The Leahy Amendment clarifies an aspect of the Helms Amendment, providing that the term "motivate," shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

However, foreign NGOs receiving global health assistance must adhere to the Protecting Life in Global Health Assistance Policy, which prohibits actively promoting abortion as a method of family planning, which includes counseling and referrals.

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[Biden Amendment](#)

This legal restriction provides that no foreign assistance funds may 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 sterilization as a means of family planning. Note that epidemiologic or descriptive research to assess the trends in incidence, extent, or consequences of abortions is permitted.

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The Helms, Leahy, Biden, and Siljander Amendments apply to **all U.S. foreign assistance funds** (not just funds for family planning or global health activities). These restrictions are included in the mandatory provisions included in USAID contracts, grants, and cooperative agreements, regardless of which sector or program area the funds support.

The statutory abortion restrictions do not apply to activities funded with non-U.S. Government sources. These restrictions apply to USAID assistance received by any kind of entity, including U.S. NGOs, foreign NGOs, public international organizations, and governments.

Highlight

Note that foreign NGOs receiving global health assistance must also adhere to Protecting Life in Global Health Assistance restrictions outlined in the last section.

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Ensuring Compliance with the Abortion-Related Restrictions

This section will review tips for implementing and monitoring compliance with the abortion-related restrictions.



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Implementation



The key to implementing the abortion-related legal and policy restrictions is

ongoing, open communication with all partners involved in USAID-funded programs. It is important to convey these restrictions from the time a project is designed through close-out.

It is important to communicate with:

- Host government officials (national and local level)
- U.S. and foreign implementing partners
- Staff implementing USAID projects
- Non-health staff at USAID Missions, particularly Program Officers, Agreement/Contracting Officers, and Resident Legal Officers

Formal orientation should be done on a regular basis for program implementation staff. This should be a part of new employee orientation and the restrictions should be reviewed periodically with veteran personnel.

USAID staff and implementing partners should be sure that the appropriate standard provisions are included in any agreements that they make. Implementing partners are responsible for passing down the appropriate clauses to sub-recipients, even those clauses that do not apply to the prime recipient. Resources to assist in locating the appropriate clauses can be found in the reference list for this module. Implementing partners should carefully consider how information regarding the statutory and policy restrictions will be disseminated to sub-recipients, including frontline service providers.

All efforts to implement the restrictions should be documented and maintained in a specific compliance file.

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[Monitoring compliance with the requirements](#)



USAID and implementing organizations are all responsible for monitoring compliance with the abortion-related statutory and policy restrictions. The focus should be on identifying and addressing vulnerabilities in programs before they become violations.

It is important to understand the local context and the legal status of abortion in the countries in which you work.

Monitoring the compliance with the abortion-related restrictions should be a part of routine site visits. It is a good idea to include these elements in a trip report checklist/template to remind people of what they should be looking for and asking about.

Information about the availability of abortion may not be formally acknowledged or documented. Special efforts should be made to interview program managers, frontline service providers, referral agents, and clients during site visits, as well as non-clinic based service delivery points, such as community-based distribution or social marketing activities.

In addition to looking for objectively verifiable situations, it is necessary to be aware of **perceptions** among program managers, clients, and providers that may suggest potential vulnerabilities. Opportunities for discussion and observation can present themselves in many forms.

Did you know?

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Project meetings are an additional opportunity to monitor for compliance. This is a good time to ask what partners are doing related to compliance. Similarly, you can look for potential issues when reviewing program documents such as policies, guidelines, reports, and service statistics.

All efforts to **monitor** compliance with the restrictions should be documented and maintained in a specific file. If there were ever a problem, it would be important to show the steps you have taken to respect the laws and policies.

Responding to potential compliance concerns:

If you suspect a vulnerability or violation, **inform** the appropriate persons (this may include project leadership, the Agreement or Contract Officer's Representative (AOR/COR), Resident Legal Officer (RLO) and USAID/Washington) and determine how to proceed with looking into the issue. With respect to possible violations of the Protecting Life in Global Health Assistance (PLGHA) policy, you should carefully review the standard provision relating to the policy, because it outlines steps that must be taken in the event of a violation. In general, you should maintain open communication. All interested parties should work together to resolve the problem.

Many organizations have significant experience with implementing and monitoring the abortion-related restrictions. Exchanging information with peers is a good way to share lessons learned.

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The following case study will help you apply what you have learned about the laws and policies to a specific situation.*

The scenario is followed by a set of questions to help you think about which restrictions apply and whether this situation presents possible violations. The answers to these questions are based on information given in the earlier sections of this course.

Please note that in real life every situation is different. The interpretation of the abortion restrictions is very situation-specific -- one small detail can change the way things are viewed.

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The following case study will help you apply what you have learned about the laws and policies to a specific situation.*

The scenario is followed by a set of questions to help you think about which restrictions apply and whether this situation presents possible violations. The answers to these questions are based on information given in the earlier sections of this course.

Please note that in real life every situation is different. The interpretation of the abortion restrictions is very situation-specific -- one small detail can change the way things are viewed.

If you find yourself facing a situation that you are not sure about, you should contact your project's AOR/COR.

**The scenario presented is fictitious and not intended to serve as guidance for any particular program or situation.*