Introduction

Course Introduction

The purpose of this course is to provide an overview of the US abortion and family planning legislative and policy requirements that govern US assistance. Many of these requirements are based on and support long-standing principles of quality of care, such as voluntarism and informed choice, which have guided USAID's family planning program for decades.

The primary audience for this course are persons who implement USAID-supported family planning activities; however, it may also be informative for persons implementing other USAID programs (such as staff working on other health activities or in the area of democracy and governance), as many of the requirements apply to all USAID activities. It is important for USAID staff, government counterparts, and implementing partners to be knowledgeable about all of the requirements because:

- If you implement activities with US foreign assistance funds, you are obligated to respect the laws and policies applicable to the assistance. While some of the requirements only apply to USAID-supported FP activities, others apply to **all** US foreign assistance activities. USAID takes compliance with all of the abortion and FP requirements very seriously.
- Increased familiarity with the requirements will improve your ability to monitor quality and compliance in your programs.
- If you encounter a problem in a USAID-supported activity, you should know what to do.

Glossary Term:
Legislative

Did you know?

The course ***References & Links*** (see the pop-out menu under the 'R' tab) contains a comprehensive list of resource documents, all of which are available on the USAID Web site. This page also includes a contact list of people who can provide more information or assistance.

Course Introduction (continued)

This course is organized as follows:

- Introduction: Provides an overview of the requirements and USAID's guiding principles for FP assistance
- Restrictions on Abortion: Reviews the Helms Amendment and other abortion-related statutes
- Requirements on Voluntarism and Informed Choice: Review in detail all of the provisions of the Tiahrt Amendment, as well as other requirements related to voluntarism and informed choice in FP programs
- Requirements on Voluntary Sterilization: Reviews Policy Determination 3, the Agency's guidelines on voluntary sterilization
- Ensuring Compliance: Discusses actions you can take to make sure all partners are aware of the requirements, illustrative monitoring activities, and steps to take if you suspect a problem
- Case Studies (1 and 2): Present case studies that will help you apply what you have learned

Highlights

This course presents a large volume of information. We hope that once you have finished the course you will keep it handy (e.g., by bookmarking the site or printing it) and use it as a resource should questions arise in your work.

Overview of Requirements

Applicability of the Requirements

Requirement	General Topic	Type	Applies To	First Enacted
1. Helms Amendment	Abortion	Legislative	All Assistance Funds	1973
2. Leahy Amendment	Abortion	Legislative	All Assistance Funds	1994
3. Biden Amendment	Abortion (biomedical research)	Legislative	All Assistance Funds	1981
4. Siljander Amendment	Abortion (lobbying)	Legislative	All Assistance Funds	1981
5. Kemp-Kasten Amendment	Voluntarism	Legislative	All Assistance Funds	1985
6. DeConcini Amendment	Method Mix	Legislative	Family Planning Assistance Funds	1985
7. Livingston-Obey Amendment	Method Mix	Legislative	Family Planning Assistance Funds	1986
8. Tiahrt Amendment	Voluntarism	Legislative	Family Planning Assistance Funds	1998
9. Policy Determination 3	Voluntary Sterilization	Agency Policy	Family Planning Assistance Funds	1977

The abortion restrictions apply to all foreign assistance activities, even those unrelated to FP. The FP requirements only apply to FP activities. This will be discussed in greater detail in the course.

These requirements apply to any kind of entity that receives USAID assistance, including US non-governmental organizations (NGOs), foreign NGOs, public international organizations, and governments. NGOs would include, for example, non-profit organizations, private institutions of higher education, and commercial organizations.

These requirements are set forth in standard provisions included in Agency agreements. Specifically, the abortion restrictions are set forth in standard provisions included in all Agency contracts, cooperative agreements, and grants, regardless of the nature of the activity. The FP requirements are only included in contracts, cooperative agreements and grants that relate to FP activities.

To view a larger version of the chart, please **click here**.

Highlights

The implementation of USAID assistance for FP activities is governed by legislative requirements and restrictions, as well as Agency policies.

Did you know?

Many of the legislative requirements are named after the Representative or Senator who sponsored the legislation.

Restrictions on Abortion

Introduction to Abortion Restrictions

This session will review in some detail the major restriction relating to abortion, the Helms Amendment, and touch on several others.

The Helms Amendment

This amendment dates back to 1973 and provides that no foreign assistance funds "*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.*"

Other Abortion Restrictions

In addition to the Helms Amendment, several other statutes relate to restrictions on US foreign assistance funds relating to

abortion:

- **Leahy Amendment**: "*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.*" [refers to the Helms Amendment]
- **Biden Amendment**: No 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.*"
- **Siljander Amendment**: No funds "*may be used to lobby for or against abortion.*"

Did you know?

It is illegal to use US foreign assistance funds to lobby ***for*** **or** ***against*** abortion.

Post-Abortion Care

Post-Abortion care (PAC), which is defined as emergency treatment for incomplete spontaneous or induced abortion, counseling on and provision of FP options, and community mobilization for PAC, **is permitted under the Helms Amendment**.

However, USAID policy prohibits the purchase or distribution of manual vacuum aspiration (MVA) equipment for any purpose with USAID assistance. USAID can support PAC programs that include the use of MVA equipment procured through non-USAID sources (e.g., training providers on how to use the equipment for PAC purposes).

PAC services should be clearly distinguished from abortion services in facilities where they are both offered, and in training programs. For other general medical equipment/supplies that could be used for multiple purposes, it should be made clear based on the location of the equipment that the purpose is for PAC - not abortion. This may include labeling equipment ("for PAC only") or designating separate spaces for PAC.

Glossary Term:
Postabortion Care (PAC)

Protecting Life in Global Health Assistance

On January 23, 2017, President Trump issued a Presidential Memorandum, reinstating the "Mexico City Policy" and directing the Secretary of State, in coordination with the Secretary of Health and Human Services to implement a plan to extend the Mexico City Policy to “global health assistance furnished by all departments or agencies.” The policy, known as “Protecting Life in Global Health Assistance” (PLGHA), went into effect on May 15, 2017, and USAID is currently implementing the policy through a May 2019 standard provision for assistance awards.

PLGHA applies to global health assistance to, or implemented by, foreign (non-U.S.) NGOs, including those to which a U.S. NGO makes a subaward with global health assistance funds. A foreign NGO that accepts the PLGHA standard provision, whether as a prime or a sub-recipient, agrees that it will not, with funding from any source, “perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to any other foreign NGO that conducts such activities.” Each organization will have the opportunity to indicate its agreement to abide by the terms of PLGHA by accepting the standard provision in its award.

Global health assistance to national or sub-national governments, public international organizations, and other multilateral entities in which sovereign nations participate is not subject to this policy.

At this time, the policy covers global health assistance provided through grants and cooperative agreements. The policy will not cover contracts until the completion of a rule-making process.

Implementing partners that have agreed to the PLGHA standard provision are responsible for ensuring compliance with its terms.

For additional details, see the *Protecting Life in Global Health Assistance and Statutory Abortion Restrictions* course.

Applicability of Statutes

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

For example, these restrictions apply to USAID-supported HIV/AIDS, maternal health, democracy and governance, and education activities, just as they apply to family planning activities. A/CORs should work with Agreement Officers and Contract Officers to ensure inclusion of appropriate standard provisions in their prime awards and in any sub-awards for which the mission requires AO/CO review or approval. A/CORs should remind prime awardees that clauses must be included in sub-awards in situations where the mission does not require AO/CO review or approval of sub-awards.

Background on Voluntarism and Informed Choice

Introduction to Voluntarism and Informed Choice Requirements

In 1982, USAID issued a Policy Paper on Population Assistance, which outlines these principles and the Agency's objectives for family planning (FP) programs.

Although times have certainly changed since the paper was issued, the principles expressed therein continue to guide USAID's work in this field.

Voluntarism

The Agency considers an individual's decision to use a specific method of FP, or to use any method at all, voluntary if it is based upon the exercise of free choice and is not obtained by any special inducements or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

Informed Choice

USAID defines informed choice to include effective access to information on FP choices and to the counseling, services, and supplies needed for individuals to choose to obtain or decline services; to seek, obtain, and follow up on a referral; or simply to consider the matter further.

These principles are codified in legislation and Agency policy. In this and the next session, we will review in-depth the Tiahrt Amendment and three additional statutes in this area.

The session **Requirements on Voluntary Sterilization** addresses voluntarism more specifically in voluntary sterilization programs.

Glossary Term:
Voluntary/voluntarism
Informed Choice for Family Planning

Did you know?

For more than 40 years, the basic principles of ***voluntarism*** and ***informed choice*** have guided US assistance for FP.

Tiahrt Amendment Overview

The Tiahrt Amendment addresses ***five specific areas*** for USAID - supported FP service delivery projects:

1. Prohibition on targets or quotas for service providers or referral agents

2. Prohibition on payment of incentives and financial rewards to clients or program personnel

3. Prohibition on denial of rights or benefits to persons who choose not to use FP

4. Requirement to provide comprehensible information on the method chosen

5. Requirement to provide experimental FP methods only in the context of a scientific study

These five areas will be explained in detail on the following pages.

Highlights

The Tiahrt Amendment, which was enacted in the 1999 Foreign Operations, Export Financing and Related Programs Appropriations Act and has appeared in all Appropriations Acts since that time, reflects the same principles concerning voluntary FP projects and informed choice that have guided USAID FP assistance since the program's inception.

Targets or Quotas

The Tiahrt Amendment states:

"*Service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes)...*"

Service providers and referral agents are defined as people who implement a service delivery project and **who deal directly with FP clients**. This may include doctors, nurses, and midwives in a health facility, as well as community-level workers.

For this purpose, a target/quota is a predetermined figure that a service provider or referral agent is assigned or required to affect or achieve. The Tiahrt Amendment specifically prohibits the following types of targets:

- Total number of births
- Number of FP acceptors
- Acceptors of a particular method of FP

Glossary Term:
Target/quota
Acceptor

Highlights

Under the Tiahrt Amendment, a ***prohibited target*** is predetermined and applied to a service provider or referral agent.

Targets or Quotas (continued)

USAID and partners may use information about number of births, number of acceptors, or number of acceptors of a particular method in reports or monitoring and evaluation plans for planning and budgeting purposes. Such information might be used to influence decisions about whether to increase support for a project to make more services available, or to replenish resources spent, or to expand a project's scope. These indicators or estimates are not inconsistent with Tiahrt unless the project treats these indicators or estimates as quotas or targets to which service providers or referral agents are subject.

Figures that are used for estimating supply or staffing needs are also acceptable.

Incentives and Financial Rewards

The Tiahrt Amendment states:

"*The project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange*

for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning..."

Section (A) of this provision of the Tiahrt Amendment provides that the payment to an **individual** must be "in exchange for becoming a family planning acceptor" in order to be characterized as an incentive. Free distribution of methods or sale at a price discounted in accordance with normal commercial practices would not be prohibited.

Section (B) of this provision applies to "**program personnel**," which is a broader term than the service providers and referral agents referenced under the targets/quotas provision. It includes persons who manage or perform other functions for an organization that implements a service delivery project. This could include, for example, nongovernmental organization (NGO) staff or health facility managers (public or private) who do not deal directly with clients, but who might be held responsible for results.

Note: Payments to voluntary sterilization clients and providers who perform sterilization procedures represent a special case and will be addressed in the **Requirements on Voluntary Sterilization** session on Policy Determination 3.

Highlights

The key to interpreting "incentives" is to see whether they are provided ***in exchange for*** accepting a method (in the case of a client) or linked to achievement of a ***predetermined*** target or quota (in the case of program personnel).

Incentives and Financial Rewards (continued)

With respect to program personnel, the Tiahrt Amendment does **not** prohibit:

- Fee-for-service/per-case payments to FP providers
- Non-financial, small-value items provided across the board to project personnel or to individuals to acknowledge general good performance (e.g., caps, work aprons, backpacks, etc.)
- Providing special training opportunities or promotions for project personnel who are considered good performers, because any organization will provide training opportunities and promotions for personnel who are doing their jobs well

Highlights

Check out this **report on Performance-based Incentives** for voluntary family planning service delivery and use for some innovative program ideas that follow USAID Family Planning Requirements.

Denial of Rights or Benefits

The Tiahrt Amendment states:

"*The project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services;*"

Just as they are prohibited from providing incentives in exchange for accepting FP, projects receiving US assistance for FP **may not penalize those who choose not to use FP**.

Examples of this could be:

- Denying access to supplemental food programs for indigents who do not use FP
- Denying maternal health services after more than a certain number of live births (such as two or three), if the couple/individual does not accept FP
- Requiring community health workers to use modern contraception or to have small families

Highlights

None of the situations bulleted would be allowed under Tiahrt because they each link a benefit with the required use of FP.

Comprehensible Information

A wall chart posted in Nicaragua displays comprehensible information on FP methods.

The Tiahrt Amendment states:

"*The project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method;*"

The comprehensible information requirement of Tiahrt only applies to the **method chosen**. This means that once a decision has been made about a method, the provider should then discuss more detailed information about that method, including:

- Health benefits of using the method
- Conditions that would make using the method inadvisable
- Known side effects

Provisions of information on other, alternative methods is not required by the Tiahrt Amendment. However, **standard provisions** in USAID's agreements with partners require FP service delivery projects to provide a broad range of FP methods and services available in the country, or information on where such methods and services may be obtained.

Highlights

Having printed materials clearly visible in service facilities or in the hands of community workers will permit projects to demonstrate and document that comprehensible information has been provided in a systematic way.

(See example of wall chart endorsed by USAID and WHO, commonly known as "the Tiahrt poster," pictured on the next page.)

Did you know?

USAID developed **specific guidance on the comprehensible information requirement**. A link to this document is also included on the Reference tab of the pop-out menu.

Comprehensible Information (continued)

To view a larger version of the wall chart, please click here.

Recognizing that the quality of FP information goes beyond the Tiahrt provision, USAID recommends a "two-track" approach that incorporates:

- **Promotion of informed choice and good client-provider interaction** (through training, supervision, counseling, mass media campaigns, etc.). Ideally the communication is interactive, where the provider offers information, listens to the client, answers specific questions, and tries not to burden the client with more information than is useful.
- **Specific, tangible interventions** at each service delivery point of contact (e.g., wall charts, counseling flip charts, client pamphlets, and package inserts/overpackaging). Having such printed material clearly visible will permit a project to demonstrate and document that comprehensible information has been provided in a systematic way.

Ideas in action

One way to provide comprehensible information includes displaying this wall chart. It is recommended that all health facilities receiving USAID support for FP display the contraceptive methods wall charts in an area where clients have access to them. However, the ***display of the posters is not a substitute for good counseling***, which programs should continue to promote.

This **link** provides information on how to order this wall chart in various languages, and countries are also encouraged to create local adaptations.

Highlights

Programs that provide comprehensible information materials should make sure a system is in place to monitor the presence of these materials in facilities or among community workers, and replace items as needed.

Experimental FP Methods

The Tiahrt Amendment states:

"*The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits...*"

USAID has issued regulations regarding research on human subjects (22 CFR 225), which are set forth in the Agency's Automated Directives System (ADS 200). These regulations are included in all grants, contracts, and cooperative agreements that support research on human subjects, and support for any research on such experimental methods must be carried out in accordance with these regulations.

Applicability of Voluntarism and Informed Choice
Applicability of the Tiahrt Amendment

The Tiahrt Amendment applies to USAID assistance (from any account) **for FP activities**. That said, Tiahrt applies only to "service delivery projects" and not to certain other FP activities, as discussed in more detail below.

Tiahrt applies to **service delivery projects** (discrete, self-contained FP activities that deal directly with "acceptors" – people) to which USAID provides assistance. These projects would include, for example, publicly operated clinics, mobile outreach/seasonal clinics, commercial or private clinics, and community-based service delivery.

Tiahrt applies when **any kind of assistance** is provided for FP service delivery projects, whether in the form of **cash**, **technical assistance, contraceptive commodities**, or **training**. For example, Tiahrt applies when:

- USAID-funded training is conducted for personnel at a service delivery project. Likewise, a service delivery project must comply with Tiahrt if USAID provides funding for project personnel who are sent for training programs that are conducted elsewhere.
- Projects receive and distribute USAID-procured contraceptive commodities in bulk (even in the absence of a formal agreement).
- A project enhances the ability to provide FP services (e.g., improving the project's management capability, or strengthening skills in how to conduct surveys, how to keep books and records, etc.).

Glossary Term:
Service delivery projects

Highlights

USAID has issued guidance to assist with the interpretation of the Tiahrt Amendment: **Guidance for Implementing the Tiahrt Requirements for Voluntary Family Planning Projects.**

This guidance is particularly useful in determining when and where the requirements apply. A link to this document can also be found in References tab in the pop-out menu.

Applicability of the Tiahrt Amendment (continued)

Tiahrt does **not** apply to USAID assistance for non-FP health activities or for FP activities that are not conducted by or for the direct benefit of a specific FP service delivery project. In general, Tiahrt **does not apply** to the following USAID programming:

- Non-family planning health assistance (e.g., control of infectious diseases, maternal health, etc.) to health facilities that may also offer FP services
- assistance for broad information campaigns, surveys and data collection, strategic planning, evaluation, biomedical and social science research, or publications
- assistance to pay costs to run a regional or worldwide FP conference
- USAID-funded travel and per diem costs of participants/trainees who may be personnel of service delivery projects to attend short-term, widely attended training conferences
- mass media campaigns conducted by organizations, or distinct units of an organization, that do not implement service delivery projects

USAID is not responsible for an organization's FP service delivery projects that are solely financed by non-USAID sources of funds.

Specific Situations Social Marketing

In **social marketing programs**, sales targets for specific methods are often established for contraceptive manufacturers, distributors, and retailers. Tiahrt does not apply to manufacturers and distributors because they do not work directly with FP acceptors.

Retailers (e.g., pharmacies), however, do provide FP services to people and conduct "projects" covered by the Tiahrt clause. Sales targets and sales commissions would not violate the requirements unless they are imposed on the retailer's employees (service providers) and do not reflect normal commercial practices (but rather are designed to achieve or affect a predetermined number of births, FP acceptors, or acceptors of a particular method).

Lower price incentives for certain FP products passed down to the acceptor from distributors and retailers do not violate the requirements. However, FP commodity retailers should take care that quality FP counseling and information has been provided to ensure clients make an informed choice.

Glossary Term:
Social marketing

Specific Situations - Contraceptive Commodities

Tiahrt applies to any organization or service delivery site that receives USAID-donated contraceptives. This is the case even if they do not receive any other form of FP assistance from USAID.

If commodities procured by or paid for by USAID are donated to a country's national supply, then Tiahrt applies to all service delivery sites (public or private) that receive those commodities. If the logistics management system is able to identify which sites do and do not receive USAID commodities (e.g., if other donors or the government also contribute to the pool), then the Tiahrt requirements apply only to those facilities receiving Agency commodities.

It is essential for USAID Missions and implementing partners to understand where their support is going and their subsequent responsibilities for compliance.

Specific Situations Results-Based Financing

Many health and FP programs are adopting the use of **results-based financing** (RBF) or disbursement models, in which payment is based on the achievement of defined results. In order to remain in compliance with the Tiahrt Amendment, several issues must be considered carefully when designing a performance-based program.

In particular, the nature of the FP indicators and how they are used, as well as conditions for payments, must be considered.

An RBF supply-side initiative that works to affect suppliers of healthcare services (e.g. doctors, nurses, community health workers) must ensure that individual service providers or referral agents are **not assigned or required to meet targets** of total number of births, number of FP acceptors or acceptors of a particular FP method, and that program personnel **do not receive incentives or financial reward for meeting targets** of total number of births, number of FP acceptors or acceptors of a particular FP method. RBF initiatives, especially those which include demand-side activities that work to affect the recipients of healthcare services, must also ensure that individuals or clients do not receive incentives or financial rewards in exchange for becoming a FP acceptor.

A recent report written in coordination with USAID's Global Health Bureau identifies some appropriate mechanisms to incorporate FP into RBF. The report explores a wide range of RBF initiatives and examines the incorporation of FP activities, provider and client payment examples, impacts when available, and lessons that hold relevance for other health service delivery settings.

Glossary Term:
Performance-based financing

Highlights

Check out this **report on Performance - based Incentives** for voluntary family planning service delivery and use for some innovative program ideas that follow USAID Family Planning Requirements.

Reporting Tiahrt Violations

The Tiahrt Amendment specifically requires that violations be reported to the US Congress. A **single violation** of the requirements of the Tiahrt Amendment related to targets or quotas, incentives to clients or program personnel, denial of benefits, or use of experimental methods must be reported. In the case of the comprehensible information requirement, a **pattern or practice of violations** of the requirement must be reported.

The Administrator of USAID has responsibility for making the determination of whether a violation has occurred. The Agency must provide a report to USAID's oversight committees in the US Congress detailing the violation and the corrective actions that have been taken within 60 days of the determination of a violation.

Note that although the intention of the Tiahrt Amendment is to promote voluntarism and prevent coercion in FP programs, the legislation does not require proof that a situation is coercive in order to determine that a violation occurred.

From the time the Tiahrt Amendment was enacted in 1999, through 2012, five violations have been reported to Congress.

Grantees, contractors, and recipients of cooperative agreements are required to notify USAID when they learn about an alleged violation of the restrictions on quotas, incentives, withholding benefits, and experimental activities – and they should also take corrective action, in consultation with USAID. For the comprehensible information proviso, USAID should be notified about violations in a project affecting *a number of people over a period of time* that would raise concern about whether there is a *systemic* problem in the project.

*Suggested procedures for investigating and reporting problems will be discussed further in the **Ensuring Compliance** session.*

Actual Tiahrt Violations

As noted previously, there have been five violations of the Tiahrt Amendment since it was enacted in 1999 through 2012. In each case, immediate and longer-term corrective actions were taken to address the violation, and USAID notified the US Congress as required by statute. The following are brief descriptions of each of the situations.

Violation 1 (2001)

The first violation occurred in Peru, where at the time USAID provided technical assistance and training for the country's Ministry of Health in the area of FP. Based on evidence gathered from a client survey, USAID learned that several respondents at one facility reported that they were offered clothes for their children, and/or work and food in exchange for accepting to be sterilized. Several respondents also reported that they were threatened with the denial of benefits, including the loss of certain health services and/or the loss of food support, if they did not agree to be sterilized. This constituted a violation of the incentives and denial of benefits provisions of the Tiahrt Amendment.

Violation 2 (2006)

The second violation occurred in Guatemala, where USAID provides FP assistance to a local NGO. USAID learned, and later confirmed, that the NGO, as part of its organization-wide, performance-based compensation system, set monthly targets and paid bonuses to referral agents for recruiting a predetermined number of clients for voluntary sterilization. This constituted a violation of the targets and incentives provisions of the Tiahrt Amendment.

Actual Tiahrt Violations (continued)

Violation 3 (2006)

The third violation occurred in the Philippines, where at the time USAID provided FP assistance to localities through contraceptive commodities, which were distributed in public facilities throughout the country, and through technical assistance. In two localities receiving USAID contraceptive commodities but no technical assistance, USAID found that individual service providers and community health workers were assigned targets covering a range of health interventions (e.g., immunizations, pre-natal consultations, and FP). The FP targets did not appear to be a particular focus for the service providers and community health workers nor were any bonuses received for meeting targets. However, because individual service providers and community health workers were assigned targets of number of FP acceptors and, in some cases, acceptors of particular methods of FP that they were required to achieve, this constituted a violation of the targets provision of the Tiahrt Amendment.

Violation 4 (2010)

The fourth violation occurred in Egypt, where USAID has a long history of partnership and government collaboration on FP activities. During a routine site visit to monitor family planning activities, the Mission staff discovered that referral agents in one district receiving USAID family planning assistance were subject to a target of new family planning users. This

constituted a violation of the targets provision of the Tiahrt Amendment.

Violation 5 (2012)

The fifth violation occurred in Bangladesh, where USAID provides training and technical assistance on FP to the government. USAID learned that the government briefly implemented a program to give lottery tickets to individuals in exchange for accepting voluntary sterilization services at public, private, and NGO clinics. This constituted a violation of the Tiahrt prohibition on providing incentives to individuals in exchange for becoming a family planning acceptor.

Additional Requirements

There are three additional legislative requirements that relate to voluntarism and choice in FP programs that receive US support.

The **DeConcini Amendment** states that "*funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services*."

The **Livingston Amendment** provides that "*in awarding grants for natural family planning . . . no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning . . .*" Nevertheless, these applicants must still comply with the DeConcini Amendment regarding referral and information on other methods.

The **Kemp-Kasten Amendment** states that no foreign assistance funds "*may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.*"

Additional Provision 1 states that no foreign assistance funds "*may 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 person to undergo sterilization.*"

> **Did you know?**
>
> Use this **chart** as a guide for the family planning compliance requirements.

Applicability of Additional Requirements

As with the Tiahrt Amendment, the DeConcini and Livingston Amendments apply to *all funds for FP activities*.

The Kemp-Kasten Amendment and Additional Provision 1 apply to *all foreign assistance funds* (i.e., not only funds for FP activities).

> **Did you know?**
>
> The chart given in the introduction of this course can serve as a one-page guide for all of the Family Planning Requirements.

Requirements on Voluntary Sterilization

Introduction to Voluntary Sterilization Requirements

USAID issued its key guidance document on voluntary sterilization (VS) nearly four decades ago, but it continues to guide activities today. *Policy Determination 3: USAID Policy Guidelines on Voluntary Sterilization* (PD-3) was originally issued as PD-70 in 1977. An addendum, *Additional AID Program Guidance for Voluntary Sterilization Activities,* was issued in 1981. They were re-issued together as part of the 1982 Policy Paper on Population Assistance. The guidelines are commonly referred to as PD-3.

USAID support for VS activities can be provided only if the VS activities comply with these guidelines in every respect. The key elements of PD-3 and its addendum address:

- Informed consent
- Ready access to other methods
- Incentive payments

Highlights

The permanent nature of sterilization requires safeguards to protect against potential abuse.

Informed Consent

Signing an informed consent form

Informed consent is defined as "*voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, expected benefits, the availability of alternative family planning options, the purpose of the operation and its irreversibility, and the option to withdraw consent at any time prior to the operation*."

An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducements or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

Glossary Term:
Informed Consent - Sterilization_2

Highlights

Sterilization is the only family planning (FP) method for which specific documentation of informed consent is required by USAID.

Did you know?

Ready Access to Other Methods

Where VS services are made available, other means of FP should also be readily available at a common location, thus enabling choice on the part of the client.

Informed Consent (continued)

Implementing organizations are required to document specifically the patient's informed consent. The document should meet the following criteria:

- Cover the topics addressed in the definition of informed consent on the previous page (risks, benefits, other FP options)
- Be written in a language that the patient understands and speaks
- Be signed by the individual and by the attending physician (or authorized assistant)

When a patient is unable to read a written certification adequately, the basic elements of informed consent must be presented orally and this must be acknowledged by the patient's mark, as well as that of a witness, on the certification. The witness should be of the same sex and speak the same language as the patient.

Copies of informed consent forms for each procedure must be retained by the operating medical facility, or by the host government, for three years.

Highlights

Note that ***informed consent*** and the ***consent form*** are not one and the same. Informed consent is a process of counseling and communication between the client and provider, in which signing the consent form is the final step before the procedure. Having a patient merely sign the form without such counseling would be unacceptable.

Incentive Payments

Similar to the Tiahrt Amendment, PD-3 prohibits the payment of incentives to potential acceptors of voluntary sterilization. However, the policy recognizes that not all forms of compensation act as incentives. The *Additional Policy Guidelines for Voluntary Sterilization Activities* provides interpretation on types of compensation - to acceptors, service providers, and referral agents - that are not considered to operate as incentives for sterilization. The underlying principle is that compensation should not in any way serve as an incentive to accept, provide, or refer for sterilization services.

There have been many changes in the design and implementation of VS programs since PD-3 was revised in 1982. Although USAID recognizes that compensation for VS clients and per case/client compensation for service providers or referral agents may not be the norm in many country programs, the PD-3 guidance remains helpful for reviewing those programs where these forms of compensation are utilized. Each of these situations will be reviewed in detail in the following pages.

Compensation to Clients

No USAID funds can be used to pay potential acceptors of sterilization to induce their acceptance of VS, or to support VS programs that include incentive payments to potential acceptors (paid from other sources).

Determination of what constitutes an incentive must be made locally, based on thorough knowledge of social and economic circumstances of potential acceptors. In general, recompense (in cash or in kind) to acceptors for legitimate, extra expenses related to VS program services is not considered an incentive payment when it is aimed at making VS services equally available at the same cost as other contraceptive services (i.e., reducing financial barriers). Examples of such expenses might include:

- Transportation to and from the procedure
- Food during confinement
- Medicines related to the procedure
- Surgically related garments
- Value of lost work during recovery

This recompense must be of a **reasonable** nature. For example, payment for lost work must correspond to a reasonable estimate of the value of lost labor over a reasonable duration of convalescence.

Did you know?

The USAID mission in country is responsible for making the determination of whether compensation related to

VS services is reasonable.

Compensation to Service Providers

Reimbursement of physicians, paramedical, and other service personnel on a per-case basis can be acceptable.

Compensation to providers for items such as anesthesia, personnel costs, pre- and postoperative care, transportation, surgical and administrative supplies, etc. on a per-case basis is generally acceptable.

Where these payments occur, they must be reasonable relative to other medical and contraceptive services provided so that no financial incentive is created for the providers to carry out VS procedures compared to provision of other methods of FP. As with the payments to acceptors, this is a judgment that must be made on a country- and program-specific basis.

Highlights

Compensation of VS providers on a per-case basis is generally acceptable.

Compensation to Referral Agents

Where field workers are employed to inform and refer potential FP acceptors, extra expenses incurred in informing and referring VS clients may be compensated on a per-case basis.

For example, a referral agent may need to spend more time in counseling, or make multiple visits, with a client who is considering a permanent method. A referral agent may also accompany a client to the facility for the VS procedure. Thus, a program may be able to justify making different payments to field workers based on the methods they provide or for which they refer.

Again, a country- or program-specific determination that the payment is for **legitimate extra expenses or activities associated with VS referral** must be made.

Applicability of PD-3

The provisions of PD-3 must be applied if USAID funds are used for **whole or partial direct support** of the performance of VS activities. This may include clinical training, provision of VS supplies or equipment, or paying salaries of doctors to perform the procedure.

The provisions of PD-3, particularly related to client incentive payments, apply to the **entirety of a VS program** for which

USAID is providing any support. That means that a VS program supported by USAID cannot be supplemented with acceptor incentives paid from other sources.

PD-3 generally would **not** apply in the following situations:

- USAID provides support for FP programs within a country and provision of VS services is not called for in the support agreement.
- VS activities are part of a host-country program, but USAID funds are not used to support such services.
- Activities and projects are only peripherally related to provision of VS services (e.g., support for construction of multi-purpose buildings, or broad-based training in reproductive health that includes VS techniques).

Highlights

PD-3 is Agency policy. It is also incorporated by reference into the 1999 Tiahrt Guidance, and the two are often read together, particularly with regard to interpreting whether payments to VS acceptors serve as incentives.

Ensuring Compliance

Introduction to Ensuring Compliance

This session will review actions that can be taken to ensure compliance with all of the abortion and family planning (FP) legislative and policy requirements. These suggested actions will help reduce and address vulnerabilities. Although this session provides guidance, there are no prescribed activities or procedures for monitoring, because this will vary based on each country and program context.

The session will go over three phases or types of activities:

- **Preventive actions**: identifying possible vulnerabilities, information dissemination
- **Monitoring actions**: field visits, partner meetings
- **Corrective actions**: if you suspect a problem

Everyone involved in an activity has an important role to play in ensuring compliance, although this will certainly vary depending on your responsibilities. **Communication among all actors to define these roles is essential.** As you go through the session, you are encouraged to be thinking about your specific job responsibilities and how these tasks apply to you.

The primary audience for this session is staff working on USAID-supported FP activities; however, because some of the requirements apply to all foreign assistance activities, other staff should consider these tips for ensuring compliance as well.

Identifying Potential Vulnerabilities

There are many actions that USAID and partner staff can take to help ensure that their programs are in compliance with the abortion and family planning requirements. A first step may be to undertake a review of FP activities that receive USAID assistance, with an eye to identifying conditions that could lead to increased vulnerability or a potential violation of one or more of the requirements. Both the content and context of the programs need to be considered. The following are some examples:

Host-Country Laws and Policies

- Is abortion/menstrual regulation legal or widely available? Is it part of the government's essential package of services? Is legal abortion available at service delivery sites receiving USAID assistance?
- Is there a movement to change the legal status or availability of abortion?
- Is there a history of targets or coercion in the host country's FP program?
- Are clients compensated for costs associated with voluntary sterilization?
- Do local governments have significant autonomy in implementing FP programs (i.e., is it a decentralized environment)?

Highlights

Particularly for large programs, fully understanding the components and partners involved in implementing FP activities is essential for identifying vulnerabilities and developing a plan to monitor compliance routinely.

Identifying Potential Vulnerabilities (continued)

Implementing Partners

- Are there new implementing partners that are implementing USAID-funded FP activities for the first time?
- Have there been changes in implementing partners or their staff?

USAID-Assisted FP Programs

- Does the program directly support FP service delivery?
- Is post-abortion care part of the program?
- Does the service package include permanent contraceptive methods?
- Does the program provide USAID-funded contraceptive commodities nationwide, or over a large geographic area?

As this list demonstrates, vulnerabilities fall into two categories:

- Those that can be addressed or minimized through some action (e.g., training new staff)
- Those that are simply part of the context, of which you must be aware and take into account when planning and monitoring FP programs (e.g., the nature and history of host-country government policies related to FP)

Ideas in action

It is helpful to develop a plan to address the specific issues relevant to your program.

Information Dissemination

***Ongoing, open communication* with all partners involved in FP activities is essential to ensuring compliance with the abortion and FP requirements.**

It is important to convey information on the requirements from the time a project is being designed through its close-out. In addition, promoting and enforcing high standards of quality of care will help to head off many problems.

The content of the relevant abortion and FP requirements should be communicated to, and discussed with, all persons involved in designing, implementing, and managing USAID-supported activities, including the following:

- ***Health Staff at USAID Missions,*** including those whose primary focus might not be FP
- ***Non-health staff at USAID Missions,*** particularly Program Officers, Contracts Officers, and also Democracy and Governance staff
- ***Host government officials*** – Ministry of Health (central and local levels), local administrative officials
- ***US and foreign implementing partners*** – headquarters and field offices
- ***Staff at clinics*** and in community-based programs receiving FP assistance

The responsibilities for communicating the requirements and restrictions to the different actors should be defined within each program.

Highlights

Where there are implementation agreements with new implementing partners for FP activities, information on all the requirements should be provided to the new partner's staff.

Information Dissemination (continued)

USAID staff and implementing partners should ensure that the **appropriate clauses** are included in any agreements they make. Implementing partners are responsible for passing down the appropriate clauses to sub-recipients, and making sure that recipients understand their meaning. A post-award meeting is a good opportunity to review the details of the requirements.

Standard provisions that include the abortion restrictions are set forth in mandatory provisions to be included in all Agency acquisition and assistance instruments with NGOs (regardless of the nature of the activity). Additional standard provisions that include the FP requirements are set forth in supplemental provisions to be included in all Agency acquisition and assistance instruments for FP activities with NGOs. Links to these provisions can be found in the **References tab** in the pop-out menu.

For agreements with host governments or public international organizations (e.g., such as United Nations entities), USAID staff must consult with their Resident Legal Officer or General Counsel attorney to determine the appropriate standard provisions for the agreements.

USAID and partner staff should ensure that **formal training/orientation** on the requirements and restrictions and compliance monitoring responsibilities is provided **on a regular basis** for program implementation staff and front line service providers. This should be a part of new employee orientation, and reviewed periodically with veteran personnel.

Translated copies of the relevant texts can be provided as appropriate. Several versions are available on the USAID Web site. It is also important to engage all stakeholders (partners, government counterparts, etc.) in specific discussions about what the requirements and restrictions mean for them.

Monitoring Actions

USAID staff, implementing partners, and government counterparts *all* have a role to play in ensuring compliance with the abortion and family planning requirements.

Compliance monitoring can be worked into regular field visits and discussions with partners, including the government and other donors. The key is to be aware of potential issues and able to recognize vulnerabilities if encountered.

Monitoring the issues surrounding voluntarism, informed choice, and abortion should be included in all program field visits where FP activities are taking place. It is a good idea to include these elements in a trip report checklist to remind people of what they should be looking for and asking about. 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.

Monitoring Actions (continued)

The establishment of prohibited targets and the use of incentives or rewards for achieving targets, may not be formally acknowledged or documented. Special efforts should be made to interview program managers, front line 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.

Open-ended, yet specific questions often elicit the most useful information. Examples include:

- How is staff performance evaluated? Is achievement of numerical goals a criterion?
- How are staff compensated (fixed salary, per-case payments, bonuses)?
- What kinds of information do you give clients about the contraceptive methods they choose?
- Do you ever give anything to FP clients, besides counseling and products? If yes, what?
- (To clients) How did you decide which method to use?

Did you know?

Observation of client counseling sessions (with the client's permission) can give insight into the information that is provided on the different methods and the method chosen.

Review of clinic records (particularly informed consent forms and financial records that might indicate the use of incentives) is also useful.

Trip reports should include a summary of questions asked, responses given and observations made, as well as any recommendations for follow-up.

Monitoring Tips

The design and content of compliance monitoring will depend on the specifics of the program. However, some principles are relevant for most situations. In general, a compliance monitoring plan/strategy should be:

Comprehensive

- It should address all the requirements and restrictions that are applicable to a program.
- It should include all relevant actors (e.g., government counterparts, project staff, and service providers).

Systematic

- Monitoring should be done on a regular basis, not just at project start-up or if a problem is suspected.
- It should include enough people across enough geographic areas to be considered **reasonably** representative.

Integrated

- Compliance monitoring can generally be integrated into other routine project monitoring activities. Many of the topics to be discussed fit well with other questions you may already be asking about quality of care or management performance.

USAID and partners should discuss the results of these monitoring activities on a regular basis.

Highlights

Both USAID Missions and implementing partners should have monitoring plans in place.

Documentation

All efforts to ensure compliance with the abortion and FP requirements should be documented and maintained in a specific file. This is important documentation that shows the steps that have been taken to comply with the laws and policies.

The **compliance file** might include:

- Copies of all the relevant laws/policies
- Notes on briefings for partners (including dates, participants, and summary of key points)
- Copies of presentations and handouts
- Correspondence, meeting minutes, internal memos
- Questionnaires used during field visits
- Reports on monitoring visits (including dates, sites visited, and summary of results)
- Notation of planned monitoring visits that were not made and the reason for rescheduling (e.g., not approved for travel, inclement weather/conditions, etc.)
- Documentation of any changes recommended and progress on their implementation

Highlights

Developing a specific file for documentation of monitoring activities is important for demonstrating attention to compliance with the FP requirements and restrictions.

Highlights

Be sure to document all monitoring efforts, including both those that reveal vulnerabilities and those that do not.

If You Suspect a Problem

Allegations about vulnerabilities or potential violations of any of the abortion and FP requirements may come from a variety of sources and may be made to USAID overseas or USAID in Washington, as well as to USAID-funded implementing partners.

Missions are required to develop procedures for responding to potential vulnerabilities and violations of the abortion and family planning requirements.

If you suspect or receive a report about a vulnerability or a potential violation, three steps should be taken:

- Inform
- Investigate
- Correct

In all cases, partners should inform USAID immediately of any potential problems and work closely with USAID to investigate and correct the situation as appropriate.

Highlights

It is important to maintain open communication. All interested parties should work together to resolve the problem.

If You Suspect a Problem - Inform

If you have a concern about a vulnerability or potential violation in a USAID-supported program, **inform the appropriate persons**. In most cases the Agreement/Contracting Officer's Representative (A/COR) and/or the Health Officer in the Mission should be notified first, along with project leadership.

If a potential violation is identified, Mission staff should inform Mission leadership, the Resident Legal Officer, and USAID in Washington at an early stage and keep them informed throughout the process. Specifically, the following entities will become involved: the Bureau for Global Health, Office of Population and Reproductive Health, the appropriate regional bureau, and the Office of the General Counsel. Contact information is listed on the References tab in the pop-out menu.

USAID expects grantees, contractors, and recipients to maintain records about alleged violations, verification, and corrective action taken, and to exercise reasonable judgment in reporting these alleged violations to the Agency.

If You Suspect a Problem - Investigate

Information gathering is key for figuring out the problematic parts of a situation, and all of the basic questions should be addressed: ***Where? When? Who? How? Why?*** The application of many of the requirements is very dependent on the situation, so it is often necessary to look further into the circumstances of an issue before determining if a problem exists, and the extent of the problem.

The following ***steps*** should also be taken:

- Review the credibility/legitimacy of an allegation or report.
- Determine the magnitude of the problem. For example, if a problem is found in one location, check to see if the same situation exists in other locations where the project works.
- Designate a point person on the project or in the office to keep track of the process.
- Document the information gathering and process and findings.

If You Suspect a Problem - Correct

As soon as a vulnerability or potential violation is discovered, action should be taken to correct the problematic situation. When a vulnerability (but not violation) is identified, steps should be taken to reduce the vulnerability where possible and to monitor the situation closely to ensure that a violation does not occur.

When an actual violation is identified, USAID seeks immediate corrective action to ensure that the practice ceases, and complies with all applicable reporting requirements. Further corrective actions may also be required (e.g., systems strengthening, training, policy changes, or termination of support).

Note, however, that even if a problem has already been corrected, USAID should still be informed as soon as possible.

In addition, violations of the Tiahrt Amendment must be reported to Congress together with a description of the corrective action taken by the Agency.

Highlights

All actions taken should be thoroughly documented.

Remember that violations of the Tiahrt Amendment are required to be reported to Congress.

For Further Information

There are several ways to get more information about the abortion and FP requirements.

Implementing partners should contact their A/COR first. USAID/Washington also has a **Compliance Team** made up of people from the Office of Population and Reproductive Health, the Regional Bureaus, and the Office of the General Counsel who are experts in these subjects.

In addition, many organizations have significant experience with implementing and monitoring the FP requirements. **Exchanging information with peers** is a good way to share lessons learned.

> **Did you know?**
>
> ***Contact information*** for the Compliance Team can be found in the References tab in the pop-out menu.

Case Study

Introduction to Case Study

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 requirements apply and whether this situation presents possible violations. The answers to these questions are based on information given in the first six sessions of this course.

Please note that in real life every situation is different. The interpretation of the family planning (FP) laws and policies 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 CTO and/or one of the resource persons listed in the Reference tab in the pop-out menu.

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