

IMPACT OF EXPANDED GLOBAL GAG RULE ON WOMEN'S HEALTH

Updated February 2018

On January 23, 2017, President Donald Trump imposed his global gag rule (GGR) via presidential memorandum. The GGR is a U.S. foreign policy that, when enacted, prohibits foreign non-governmental organizations (NGOs) that receive certain categories of U.S. foreign assistance funds from advocating for abortion, or providing, counseling, or referring for abortion services as a method of family planning.

Historically, restrictions have been applied to international family planning funds. However, Trump's GGR is a dramatic expansion in the number and type of foreign assistance programs that are subject to the restrictions, as it targets all global health assistance funds. On March 2, 2017, USAID began to implement the first phase of Trump's GGR with the release of the Standard Provision previously issued under the Bush Administration that applied only to family planning health assistance.¹ The second phase, expanding the GGR to all other global health assistance, was approved by Secretary of State Rex Tillerson and announced on May 15, 2017.

The Trump Administration named the expanded policy "Protecting Life in Global Health Assistance" and set forth guidance for the U.S. government to apply the Standard Provisions of the GGR to NGOs that receive U.S. funding for all global health assistance.² Under the expanded policy, global health assistance includes funding for international health programs, such as HIV, maternal and child health, malaria, family planning, and Zika.³ Under President Trump, the GGR applies to nearly nine billion dollars in funding, compared to \$600 million in family planning money under previous iterations of the GGR.⁴ Humanitarian assistance is exempted from this policy.

According to the U.S. Department of State, the expanded GGR "[a]pplies to global health assistance to, or implemented by, foreign NGOs, including those to which a U.S. NGO makes a sub-award with such assistance funds."⁵ As Standard Provisions continue to go into effect, the policy will apply to all new funding agreements (e.g. grants and cooperative agreements), and to existing agreements when amended to add funding.

Projected Impact of Trump's Global Gag Rule:

- Contributes to at least:
 - 6.5 million unintended pregnancies
 - 2.1 million unsafe abortions
 - 21,700 maternal deaths
- Halts the introduction of new, effective contraceptive options
- Ceases the provision of family planning services in over 600 ministry of health sites
- Ends funding for voluntary family planning consultations and services for young people, including girls living with HIV and AIDS

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The GGR, both in the first and second phases,⁶ does not prohibit activities around abortion in the cases of rape, incest, and life endangerment of the pregnant person. It does not restrict funding from treating injuries or illnesses caused by legal or illegal abortions.

The Global Gag Rule has:

- Prevented women and girls from accessing contraception and safe abortion consistent with the laws in their countries
- Been associated with increased abortion rates
- Hampered HIV prevention efforts
- Contributed to the closing of health clinics
- Obstructed rural communities' access to health care
- The potential to negatively affect the speed and effectiveness of humanitarian aid.

Under the GGR, foreign NGOs are forced to choose between one of two options:

1. Accept U.S. funds and be prohibited from providing abortion counseling, referrals, or even advocacy efforts, and from providing abortions outside of the three exceptions.
2. Refuse U.S. funds and attempt to secure alternate sources of funding in order to keep health clinics open, continue providing a range of sexual and reproductive health services to clients, and continue advocating for law reforms to reduce unsafe abortion.

The GGR is a barrier to a wide range of health services for women and girls globally.

[Two hundred and fourteen million](#) women globally who wish to avoid future pregnancies are not using modern methods of family planning to avoid pregnancy.⁷ Every year, 74 million unintended pregnancies occur in developing countries, leading to an estimated 28 million unplanned births and [36 million abortions](#).⁸ More than 21 million of these abortions are unsafe, and deaths due to unsafe abortion make up nearly [13% of all maternal deaths](#) globally.⁹ USAID is a leading donor addressing women's contraceptive needs, accounting for nearly half of all donor assistance in this area.

Marie Stopes International (MSI) estimates that without alternative funding between 2017 and 2020, Trump's GGR could result in **6.5 million unintended pregnancies, 2.2 million abortions, 2.1 million**

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unsafe abortions, 21,700 maternal deaths, and will [prohibit](#) the organization from reaching 1.5 million women with contraception each year.¹⁰

Trump's GGR [will force the](#) International Planned Parenthood Federation (IPPF) to lose \$100 million for effective sexual and reproductive health services for millions of people, including those affected by humanitarian crises.¹¹ In Uganda, they **will not be able to trial Sayana Press, a three-month, progestin-only, injectable contraceptive**. Uganda has one of the highest fertility rates in the world and potentially thousands of women will lose access to contraception. In [Nepal](#), Trump's GGR will likely result in **601 ministry of health sites losing family planning support**. In the Homa Bay region of Kenya, Trump's GGR will cause the IPPF affiliate Family Health Options Kenya (FHOK) **to lose funding for over 5,000 voluntary family planning consultations and services for young people, including for young girls living with HIV and AIDS**.¹²

A [2010 study](#) from the Leitner Center for International Law and Justice at Fordham Law School found the GGR enacted under George W. Bush negatively affected Ethiopia's efforts to mitigate high rates of **unsafe abortion**.¹³ The report found that organizations that refused to comply with the GGR lost their USAID funding, which **resulted in loss of services provided by clinics, as well as contraceptive supplies, technical support, and equipment**. Organizations that did not comply were prohibited from attending NGO meetings funded by USAID, thus inhibiting cross-organizational information sharing about maternal mortality, supply chains, and clinical practices. Providers in clinics who complied with the GGR were unable to give their clients accurate medical information, resulting in women losing trust in their providers.

A 2011 Stanford University study, published in the Bulletin of the World Health Organization, examined the effects of the GGR in sub-Saharan Africa after President George W. Bush reinstated it in 2001. The [study](#) looked at the association between the GGR and abortion and found that the "Mexico City Policy is **associated with increases in abortion rates** in sub-Saharan African countries".¹⁴ Possible causes include **reduced access to contraception** leading to increased unintended pregnancies and more reliance on abortion to prevent unwanted birth.

A threat to health and science, **the GGR hampers HIV prevention** efforts because of the closing of health clinics and disruption of relationships and supply chains of commodities – leading to reduced access to condoms and to sexual health services generally. For example, during the Clinton Administration, the Lesotho Planned Parenthood Association received 426,000 condoms over two years from USAID.¹⁵ When the GGR went back into effect in 2001, USAID had to **suspend condom shipments** to Lesotho because Planned Parenthood was the only provider of condoms in that country. At the time that condom shipments were ceased, one in four women in Lesotho was infected with HIV.

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The GGR also results in the closure and consolidation of clinics. A [2015 study](#) found that the Planned Parenthood Association of Ghana had to **close and consolidate many clinics** because they could not take USAID funding after the imposition of the GGR. In the aftermath, there was an **increase in unwanted pregnancies across the country**.¹⁶

Research conducted from 2002 to 2006, during the Bush imposition of the policy, showed the devastating impact of the GGR on the health of women in Kenya. The Family Planning Association of Kenya and MSI Kenya, leading providers of health care to people living in **poor and rural communities** in the country, refused USAID funding rather than comply with the GGR. A [2005 study](#) from the Joseph R. Crowley Program at Fordham University found that this loss of U.S. funding drastically **curtailed community-based outreach activities for contraceptive counseling and provision, condom distribution, HIV testing, and the flow and availability of contraceptive supplies**.¹⁷ A consortium of NGOs led by PAI also found that USAID had to cut off shipments of contraceptives – already in short supply – to 16 countries in sub-Saharan Africa, Asia, and the Middle East.

Disqualifying certain foreign NGOs from receiving US funding has a **negative impact on the speed and effectiveness of humanitarian aid**, thereby increasing hardships for women and their families. MSI United States, which would be disqualified from receiving U.S. funding under the GGR, [wrote](#) that in the few months after the devastating Nepal earthquake in April 2015, they used U.S. assistance to give 2,843 general and gynecological examinations, provide 586 contraceptive-implants, distribute 355 safe-delivery kits, and provide 886 pre- and postnatal visits for women and their infants.¹⁸ Such services by MSI and others would be reduced or eliminated under the GGR.

THE GLOBAL GAG RULE: A TIMELINE OF POLICY AND LEGAL ACTIONS

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1984 Mexico City Policy Announced

At the International Conference on Population and Development held in Mexico City in 1984, the Reagan Administration announces a policy, referred to as “The Mexico City Policy”, or “the global gag rule”. Foreign non-governmental organizations (NGOs) receiving U.S. family planning assistance must certify, through a Standard Provision – as a condition of funding – that they will not use their own, non-U.S. funds, for performing, advising on, or endorsing abortion as a method of family planning. The policy includes exceptions for abortions performed in cases of rape, incest, and life endangerment.

1989 DKT Mem'l Fund Ltd. v. Agency for Int'l Dev., 887 F.2d 275, 278 (D.C. Cir. 1989)

In this first court challenge on whether the GGR violates domestic NGOs’ free speech, the majority does not find that the policy infringes on the NGO's First Amendment free speech rights, since the certification requirement of the GGR does not restrict the domestic NGO from using its private funds for abortion services, nor for abortion promotion, and does not require the NGO to promote government policy with its own funds.

1990 Planned Parenthood Fed'n of Am., Inc. v. Agency for Int'l Dev., 915 F.2d 59 (2d Cir. 1990)

The domestic NGO Planned Parenthood Federation of America alleges that the GGR infringed on its First Amendment rights to freely associate and collaborate with foreign NGOs, such as Planned Parenthood's foreign affiliates. The court rejects this, finding “no constitutional rights implicated” by the Standard Provision because domestic NGOs can use their own private funds to pursue abortion-related activities in foreign countries and that any harm is the result of foreign NGOs choosing to take USAID funds.

1990 Pathfinder Fund v. Agency for Int'l Dev., 746 F. Supp. 192 (D.D.C. 1990)

In this challenge, the court addresses the issue left undecided in DKT International. It considers whether the First Amendment right of expressive association of Pathfinder and two other domestic NGOs is infringed upon by the GGR. The court holds that the NGOs’ right of expressive association was not infringed and that the Standard Provision does not impose a “substantial burden” on Pathfinder et al. The court determines that the Standard Provision is “rationally related” to the government's interests and that it is constitutional as applied.

1993 President Bill Clinton [rescinds](#) the global gag rule on January 22, 1993.¹⁹

1999 A modified global gag rule is written into law as a “one-year deal” by the Republican Congress, and President Bill Clinton signs in exchange for the release of more than one billion dollars of unpaid United Nations dues.

2000 After the one-year legislative restriction [lapses](#), the GGR is not in effect.²⁰

2001 President George W. Bush [re-imposes](#) the GGR in a memorandum on January 22, 2001.²¹ In March of that year, an additional presidential memorandum is issued permitting post-abortion care but

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requiring foreign NGOs to certify that they do not “perform or actively promote abortion as a method of family planning” as a condition of receiving U.S. family planning assistance and will not do so while receiving such assistance.²² Assistance is defined to include not just funds, but also the provision of technical assistance, customized training, and commodities, including contraceptive supplies. Medical equipment purchased with U.S. funds, as well as facilities supported by U.S. funds, may not be used to provide abortion services as a method of family planning.

2002 CRLP v. Bush, 304 F.3d 183 (2d Cir. 2002) This case is brought against the Bush Administration by a United States-based human rights organization and individually-named international human rights attorneys, asserting that the GGR violates their free speech, due process, and equal protection rights by impeding their ability to work overseas with women’s rights organizations seeking law reform to expand access to abortion. The free speech claim is denied based on the *Planned Parenthood* decision, the due process claim is rejected for lack of standing (the organizations harmed by vague language are foreign NGOs, not CRLP) and the equal protection claim is rejected because the United States “Supreme Court has made clear that the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds.”

2003 President George W. Bush [issues](#) a memorandum on August 29, 2003, extending the GGR to include funding at the Department of State.²³ The memorandum states that the GGR did not apply to funding for the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) and states that “foreign NGOs” do not include multilateral organizations such as the U.N. Population Fund (UNFPA) and the Global Fund to Fight AIDS, Tuberculosis and Malaria.

2009 President Barack Obama [rescinds](#) the global gag rule memorandum on January 23, 2009.²⁴

2017 President Donald Trump [imposes](#) his global gag rule in a Memorandum on January 23, 2017.²⁵ His GGR is a dramatic expansion of the number and type of foreign assistance programs that are subject to the policy. For the first time, the Memorandum directs the Secretary of Health and Human Services, in addition to the Secretary of State and USAID Administrator, “to the extent allowable by law,” to “implement a plan to extend the requirements of the reinstated Memorandum to global health assistance furnished by all departments or agencies.” On March 2, 2017, USAID begins implementation of the first phase of Trump’s GGR with a new Standard Provision that applies to family planning assistance. This phase is a rollout of the 2001 policy and includes the Standard Provision in all new family planning awards. While existing awards will not be amended, GGR clauses are added as new incremental funds are notified and obligated. On May 15, 2017, the U.S. Department of State [announces](#) an expansion plan, called “Protecting Life in Global Health Assistance,” that applies to U.S. departments and agencies that receive U.S. funding for global health assistance, including maternal and child health, HIV, and malaria.

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- ¹ USAID, STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL ORGANIZATIONS 83-95 (2017), available at <https://www.usaid.gov/sites/default/files/documents/1868/303mab.pdf>.
- ² U.S. DEPT. OF STATE, PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE, FACT SHEET, May 15, 2017, available at <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>.
- ³ *Id.*
- ⁴ KAISER FAMILY FOUNDATION, GLOBAL HEALTH POLICY, *The Mexico City Policy: An Explainer*, available at <http://kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>.
- ⁵ U.S. DEPT. OF STATE, PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE, FACT SHEET, *supra* note 2.
- ⁶ U.S. DEPT. OF STATE, BACKGROUND BRIEFING: SENIOR ADMINISTRATION OFFICIALS ON PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE, May 15, 2017, available at <https://www.state.gov/r/pa/prs/ps/2017/05/270879.htm>.
- ⁷ WORLD HEALTH ORG., *Fact Sheet: Family Planning/Contraception* (July 2017), available at <http://www.who.int/mediacentre/factsheets/fs351/en/>.
- ⁸ Susheela Singh, et al., ADDING IT UP: THE COSTS AND BENEFITS OF INVESTING IN SEXUAL AND REPRODUCTIVE HEALTH, GUTTMACHER INSTITUTE (2014), available at https://www.guttmacher.org/sites/default/files/report_pdf/addingitup2014.pdf.
- ⁹ WORLD HEALTH ORG., *Preventing unsafe abortion* (2017), available at http://www.who.int/reproductivehealth/topics/unsafe_abortion/magnitude/en/.
- ¹⁰ MARIE STOPES INT'L, *The Mexico City Policy: A World Without Choice* (2017), available at <https://www.mariestopes-us.org/wp-content/uploads/2017/01/Mexico-City-Policy-A-World-Without-Choice.pdf>.
- ¹¹ INT'L PLANNED PARENTHOOD FED'N, *Why we will not sign the Global Gag Rule* (2017), available at <http://www.ippf.org/news/why-we-will-not-sign-global-gag-rule>.
- ¹² INT'L PLANNED PARENTHOOD FED'N, *IPPF projects at risk because of the Global Gag Rule* (2017), available at <http://www.ippf.org/global-gag-rule>.
- ¹³ Chi Mgbako et al., *Exporting Confusion: U.S. Foreign Policy as an Obstacle to the Implementation of Ethiopia's Liberalized Abortion Law*, available at http://www.leitnercenter.org/files/Publications/LeitnerCtr_EthiopiaReport_WebVersion.pdf.
- ¹⁴ Eran Bendavid et al., *United States aid policy and induced abortion in sub-Saharan Africa*, 89 WORLD HEALTH ORG. 12, 873-880 (2011).
- ¹⁵ SNEHA BAROT & SUSAN A. COHEN, THE GLOBAL GAG RULE AND FIGHTS OVER FUNDING UNFPA: THE ISSUES THAT WON'T GO AWAY (2015), GUTTMACHER POL'Y REV. 2, 27-33, available at <https://www.guttmacher.org/gpr/2015/06/global-gag-rule-and-fights-over-funding-unfpa-issues-wont-go-away>.
- ¹⁶ See, e.g., Kelly M. Jones, *Contraceptive Supply and Fertility Outcomes: Evidence from Ghana*, 64 ECON. DEV. AND CULTURAL CHANGE 1, 31-69 (2015).
- ¹⁷ See generally Mehlika Hoodbhoy et al., *Exporting Despair: The Human Rights Implications of U.S. Restrictions on Foreign Health Care Funding in Kenya*, 29 FORDHAM INT'L L.J. 1, 1-126 (2005).
- ¹⁸ MARIE STOPES INT'L UNITED STATES, *The US Presidential Election: What will it mean for the women we serve?* (2016), available at <https://www.mariestopes-us.org/2016/us-funding-international-family-planning/>.
- ¹⁹ U.S. Office of the Press Secretary, *Memorandum for the Acting Administrator of the Agency on International Development*, (Jan. 22, 1993), <https://clinton6.nara.gov/1993/01/1993-01-22-aid-family-planning-grants-mexico-city-policy.html>.
- ²⁰ CTR. FOR REPRODUCTIVE RIGHTS, *The Bush Global Gag Rule: Endangering Women's Health, Free Speech and Democracy*, (July 1, 2013), available at <https://www.reproductiverights.org/document/the-bush-global-gag-rule-endangering-womens-health-free-speech-and-democracy>.
- ²¹ U.S. Office of the Press Secretary, *Memorandum for the Administrator of the United States Agency for International Development*, (Jan. 22, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/20010123-5.html>.
- ²² U.S. Office of the Press Secretary, *Memorandum for the Administrator of the United States Agency for International Development*, (Mar. 28, 2001), <http://www.jurist.org/documents/presidentialmemos/2001/03/01-8011.php>.

²³ U.S. Office of the Press Secretary, *Memorandum for the Secretary of State*, (Aug. 29, 2003), <http://georgewbush-whitehouse.archives.gov/news/releases/2003/08/20030829-3.html>.

²⁴ U.S. Office of the Press Secretary, *Statement of President Barack Obama on Rescinding the Mexico City Policy*, (Jan. 23, 2009), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/statement-president-barack-obama-rescinding-mexico-city-policy>.

²⁵ U.S. Office of the Press Secretary, *Presidential Memorandum Regarding the Mexico City Policy*, (Jan. 23, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>.