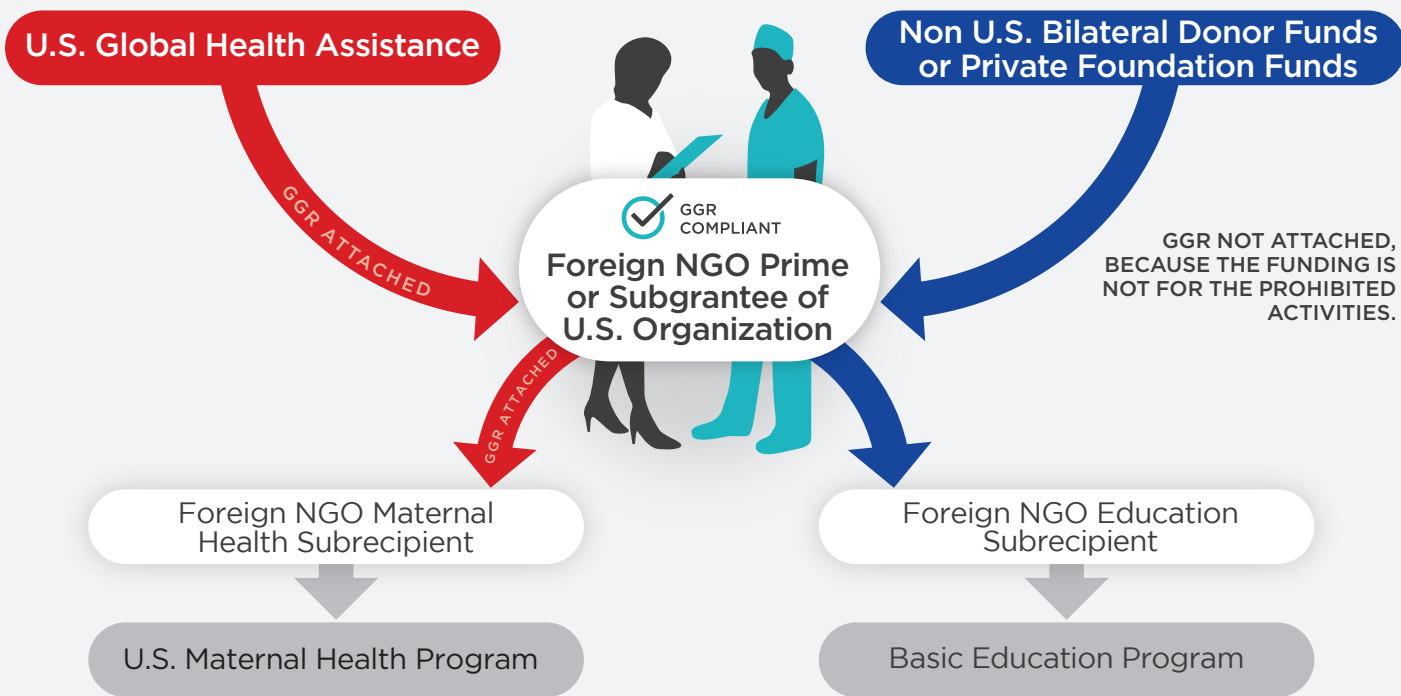


The Interpretation That Vastly Extended the Harm of the Global Gag Rule

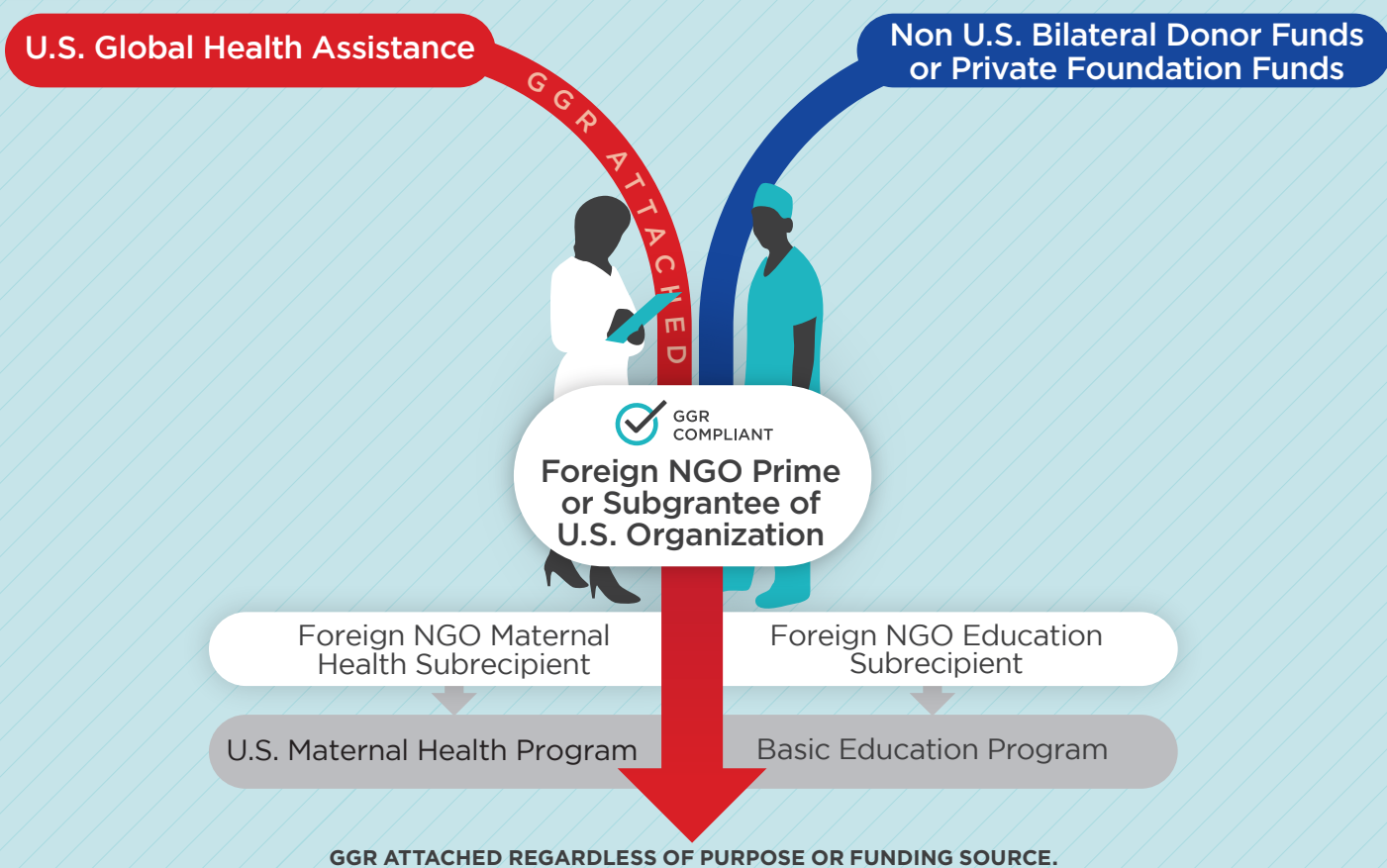
On March 26, 2019, after a 13-month wait for the U.S. State Department to implement technical clarifications as part of the first Global Gag Rule review, the world finally got some answers. Unfortunately, those answers came in the form of a stunning about-face in relation to the definition of "providing financial support" contained in the standard provisions of the policy.

The illustration below demonstrates the mechanism of the change and how it differs from previous interpretations of the standard provision.

BEFORE



AFTER



The Interpretation That Vastly Extended the Harm of the Global Gag Rule

PAI has developed hypothetical scenarios to assist partners and donors in understanding the U.S. State Department’s March 2019 new interpretation of the “financial support” clause in the standard provision of the Global Gag Rule. These scenarios illustrate how the policy change would apply to:

- A compliant foreign NGO prime or subgrantee that is receiving U.S. global health assistance funds, as well as funds from a bilateral donor (representative of any government donor);
- A compliant foreign NGO prime or subgrantee that is receiving U.S. global health assistance funds, as well as funds from a private U.S. foundation (representative of any foundation).

Note: the GGR does not apply to U.S. NGOs and they still can engage in abortion-related activities with their private funding. U.S. NGOs are only required to flow down the policy to their foreign NGO subgrantees. As such, the new interpretation of the “financial support” provision represents no change for U.S. NGOs.

Important to Remember

The Global Gag Rule is not and has never been about the use of U.S. taxpayer dollars.

Instead, the policy controls how foreign nongovernmental organizations (NGOs) use *their own non-U.S. government money* as an eligibility condition to receive U.S. global health assistance.

The new interpretation of the financial support clause drastically extends this overreach—co-opting funding from other donor governments and private foundations, and U.S. funding streams outside of global health assistance regardless of the purpose of that funding.

Scenarios

Girls Health International (GHI) is a foreign NGO advancing girls’ rights to health and education. GHI receives funding from the U.S. government, private foundations and several bilateral donor governments. GHI has agreed to comply with the Global Gag Rule.

Scenario A

Freedonia, a donor government, provides funding to GHI to support access to basic education and improve learning outcomes for girls in Oceania, a developing country. To achieve the objectives of the project, GHI plans to subgrant to foreign NGOs in Oceania who are experts in improving the quality of teaching and learning in schools.

Before

- To remain compliant with the Global Gag Rule, GHI is required to flow the policy down on U.S. global health assistance subgrants.
- With respect to other funding, GHI only needs to ensure that the funds being subgranted will not be used by a subgrantee to perform abortion-related activities that would violate the policy if undertaken by GHI itself.
- Since GHI is subgranting basic education funding from Freedonia to foreign NGO partners, there is no need to flow the policy language down, as it will not be used to carry out activities prohibited by the policy.

After

- GHI is now required to flow the policy down on ALL funds—irrespective of origin or purpose—in order to retain its eligibility for U.S. global health assistance.
- GHI must conduct due diligence on all organizations receiving its subgrants to ensure that none of the subgrantees are engaged in abortion-related activities prohibited by the policy, regardless how those activities were financed.

Scenario B

GHI also receives funding from the Ruckus Foundation, a large private family foundation focused on reducing global inequality. The funding from the Ruckus Foundation will be used to ensure schoolgirls have access to sanitation services. To achieve the objectives of the project, GHI plans to subgrant to foreign NGO partners in Oceania who have expertise in ensuring access to clean and convenient sanitation services.

Before

- GHI must ensure that the funds being subgranted from the Ruckus Foundation to the foreign NGOs in Oceania are not being used to perform abortion-related activities that would violate the policy if undertaken by GHI itself.
- Since GHI is subgranting funding to foreign NGO partners in Oceania from the Ruckus Foundation to improve sanitation services in schools, there is no need to flow the policy language down, as the funding will not be used to carry out activities prohibited by the policy.

After

- GHI must conduct due diligence on all foreign NGO partners in Oceania to whom it plans to subgrant Ruckus Foundation funding. Before the foreign NGO partners in Oceania can receive funding from GHI, they will need to agree to comply with the Global Gag Rule.
- The due diligence and subsequent gagging of the foreign NGO partners in Oceania is a result of the subgranting of funding originally from the Ruckus Foundation and not the receipt of any U.S. global health assistance.