Good to Go

Permissible Abortion-Related Activities Under Current U.S. Law and Policy

In response to an ongoing need for clarification and disinformation being spread by opponents to abortion rights, this publication provides an overview of what abortion–related activities are permissible under current U.S. law and policy – including activities that U.S. and non–U.S. government sources can fund. PAI created this resource to address persistent questions and concerns faced by advocates and implementers and share updated guidance on permissible activities. This resource is intended to counter misinterpretation and overapplication of policy restrictions that result from confusion about what is allowable. PAI strives to provide clear and simple policy guidance that enables advocates and implementers to offer the widest range of abortion information and services possible.

Background

Although President Biden reversed the Trump administration's dramatically expanded version of the Global Gag Rule (GGR) — known as Protecting Life in Global Health Assistance (PLGHA) — shortly after his inauguration in January 2021, there is some persistent confusion among advocates and implementers as to how U.S. government health assistance — including family planning and reproductive health assistance — may be used. In addition, many advocates and implementers have asked for clarification about if and how the U.S. Supreme Court ruling in Dobbs v. Jackson Women's Health Organization in June 2022 — which overturned the 1973 Roe v. Wade decision and ended the constitutional right to abortion in the United States — might impact foreign assistance programs funded by the U.S. government (USG). In particular, there is interest in what — if any — impact the Dobbs decision may have on USG-funded programs focused on expanding access to family planning and reproductive health care overseas, especially on abortion-related activities.

On the one-year anniversary of the Dobbs decision ending Roe, the U.S. Department of Health and Human Services released a statement re-affirming the Biden-Harris administration's commitment to advancing sexual and reproductive health and rights (SRHR) globally and provided critical guidance on allowable abortion counseling and referral services that directly address the maternal health crisis related to unsafe abortion that persists around the world.

Impact of the Fall of Roe on U.S. Foreign Assistance

From a technical, legal standpoint, the Supreme Court decision in the Dobbs case does **not** affect the longstanding statutory restrictions on abortion contained in the legislation that governs U.S. foreign assistance. These remain in effect. The Dobbs decision also does **not** change the policies and programming of the U.S. Agency for International Development (USAID), State Department or any other government agencies implementing global health programs. The U.S. government **will** continue to partner with other governments, NGOs, multilateral organizations, and the private sector to advance SRHR unabated.



Statutory Restriction Versus Eligibility Condition

While statutory restrictions on the use of U.S. foreign assistance funds for abortion–related activities remain the same, the rescission of PLGHA restored non–U.S. NGOs' eligibility to receive U.S. global health assistance so long as they conduct abortion–related activities with non–USG funds.

USAID, the State Department, and other U.S. government departments and agencies must still comply with statutory restrictions on abortion through any account in the annual State Department and foreign operations appropriations bill. But with the recission of the PLGHA, these restrictions no longer apply to funds provided by non–USG sources, including an NGO's own government, other bilateral donors, multilateral organizations, foundations and other privately raised financial support. In other words, an NGO is eligible to receive USG funds if it engages in abortion–related activities with non–USG funds.

However, any organization engaged in abortion–related activities with non–USG funds must be sure to implement accounting systems and financial controls to ensure that USG funds are strictly segregated and not spent on prohibited abortion–related activities. Governments in countries with progressive abortion laws have maintained segregated accounts for USG funds to prevent the comingling of monies for decades.

However, it is important to note that two eligibility conditions remain in law — and violating either of these could disqualify an organization from receiving U.S. foreign assistance. Both statutory provisions relate to the prevention of coercive practices. The first is the 1985 Kemp–Kasten amendment that prohibits funding 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 coerced abortion or involuntary sterilization." The second is a rarely, if ever, used provision in the annual appropriations bill that denies U.S. foreign assistance to any country or organization if the president certifies that USG funds would be used in violation of abortion and involuntary sterilization restrictions contained in the permanent foreign aid authorizing statute.

Performance of Abortion

The 1973 Helms amendment restricts the use of USG assistance to perform "abortion as a method of family planning or to motivate or coerce any person to practice abortions." Health care providers and advocates have asserted that the provision of abortion in cases of life endangerment, rape or incest should not be considered use of abortion as a "method of family planning." (Even Republican presidents since Reagan have interpreted this phrase—in the context of GGR implementation—to permit foreign NGOs to perform an abortion in the case of life endangerment, rape or incest using non-U.S. funds and to not put at risk their eligibility to receive USG funds in the process.) However, the Biden-Harris administration has remained silent on whether the use of USG funds might be permissible for those exceptions under Helms.

As the accompanying chart indicates, all organizations are free to use **non-USG** funds to perform abortion, counsel and refer for abortion, lobby for the liberalization of abortion laws, purchase and distribute manual vacuum aspiration (MVA) kits and engage in biomedical research on abortion.

The chart also indicates the types of abortion-related activities that the NGO can or might be able to undertake with **USG funding**. In the chart, these activities are color-coded: green means "go" (allowable activity), yellow means "caution" (may be allowed, but NGOs should seek guidance), and red means "stop" (prohibited activity). The relevant legal or policy authority is also cited. A more detailed discussion of these types of activities follows below.

Counseling and Referral for Abortion

The 1994 Leahy amendment defines the term "motivate" in the Helms amendment to allow the "provision, consistent with local law, of information or counseling about all pregnancy options," which can include abortion in countries in which it is legal. As further clarified in the Biden–Harris administration's June 2023 statement, it is permissible to use USG funds to provide "evidence–based counseling and referral services to clients, in accordance with local law."

Lobbying on Abortion

The definition of what it means to "lobby for or against abortion" under the 1981 Siljander amendment has never been formally established, and no legislative history exists to guide how the amendment should be interpreted legally. The Siljander amendment applies to all U.S. foreign assistance, not just that related to SRHR, and was most notably a source of controversy during negotiation over the Kenyan constitution. USAID guidance states that "determinations of compliance with legal restrictions are fact specific" and urges consultation with agency legal counsel. USAID grantees should also ensure compliance with a standard provision in their funding agreement that prohibits the use of USG funds for "information, education, training, or communication programs that seek to promote abortion as a method of family planning." As a result, an NGO should proceed with caution before engaging in advocacy activities related to abortion law or policy using USG funds and should consult with its USG funding agency or prime partner and its funding agreement.

Dissemination and Utilization of Research or Data on Abortion

The provision of abortion information to the general public using USG funds may run afoul of the Helms amendment's restriction on efforts to "motivate" people to practice abortion, which may not be ameliorated by the Leahy amendment's clarification of the term

"motivate," and the Siljander amendment's limitation on abortion lobbying. Dissemination of research or data on the incidence and harms of unsafe abortion is likely to be considered a more permissible USG-funded activity in which an NGO might engage relative to the discussion of the public health benefits of safe abortion care. An NGO should proceed with caution before engaging in public education activities about the benefits of safe abortion when utilizing USG funds and should consult with its USG funding agency or prime partner.

Meetings, Conferences, and Working Groups on Abortion

An NGO should proceed with caution and consult with its USG funding agency or prime partner if there is any doubt about whether participation in a meeting, conference or working group at which the subject of abortion may be discussed is a permissible use of USG funds. Determinations of the permissibility of using USG funds should take into consideration the following factors: the topics and agenda for the meeting, conference, or working group; the nature of the organization's role or participation; its funding sources; and the scope of work of the USG-funded project and its staff. (Note: Individuals may engage in activities in their private capacity and on their own time that might otherwise be restricted if carried out by the organization itself or on its behalf.)

Post-Abortion Care (PAC) and Emergency Medical Obstetric Care

USAID support for PAC includes funding for treatment of complications of abortion, both induced or spontaneous (miscarriage), family planning counseling and services as well as referral from emergency care to other reproductive health care services. Such efforts require investments in training and service delivery, policy development, operations research and community involvement.

However, USAID funds cannot be used to "finance the purchase or distribution of [MVA] equipment for any purpose." Nevertheless, NGOs may procure MVA equipment with non–USG funds and use it for both PAC and menstrual regulation. Efforts to help strengthen logistics systems that include MVA kits using USG funds are permissible and consistent with USG prioritization of health systems strengthening (including logistics) efforts and are not contrary to the prohibition on procuring MVA equipment.

USG funds may be used for training in the use of misoprostol for postpartum hemorrhage and PAC. USG funds may be used to procure misoprostol oral tablets "for the prevention of postpartum hemorrhage where oxytocin is not available or cannot be safely used, and post–abortion care."

Medication Abortion

Mifepristone—together with misoprostol—is part of the two-drug regimen that is used in more than 90 countries around the world to induce a medication abortion. Although there is no known explicit restriction on the

subject, USG funds have not been used to procure and distribute mifepristone.

Sexual and Reproductive Health Research

The 1980 Biden amendment prohibits the use of USG funds "to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of abortions as a means of family planning."

Permissible biomedical research on contraception using USG funds includes research on voluntary temporary, permanent, and long-acting reversible methods of contraception and on multipurpose prevention technologies for the prevention of both pregnancy and sexually transmitted infections. However, the Biden amendment explicitly prohibits biomedical research on methods to perform "involuntary sterilization."

Demographic, epidemiological and social science research has a long history of USG support, and organizations may use USG funds to collect and disseminate research findings on abortion-related topics. The standard provisions included in USAID grant and cooperative agreements state: "Epidemiological or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded."

Co-location and Pooled Funds

At the field level, it is not uncommon for NGOs to have sources of funding in addition to that provided by the USG and to use those non–USG funds to provide comprehensive SRHR services, including safe abortion care. In such circumstances, it is imperative that the NGO implement policies, procedures, and practices to ensure compliance with USG funding requirements to mitigate the risk of losing USG financial support.

Any organization engaged in abortion-related activities with non-USG funds must be sure to institute accounting systems and financial controls to ensure that USG funds are strictly segregated and not spent on restricted abortion-related activities, including for salaries, equipment (medical and non-medical, such as telecommunication and computers), and travel. In situations in which an NGO receives pooled funding from the USG and one or more governmental or private donors, care should be taken to ensure that no USG funds are expended on restricted abortion-related activities and that the allocation of shared costs among the donors is allowable, consistent, and proportionate.

The co-location of USG and non-USG funding poses significant potential compliance vulnerabilities that require risk mitigation. For example, there could be situations in which the NGO is providing safe abortion care with non-USG funding while USG funds are supporting other services and programming or scenarios in which the USG is funding permissible post-abortion care (PAC) in the same health facility where safe abortion care supported by non-USG funding is part of the package of health services being offered. In such circumstances, risk mitigation measures that might be put in place could include labeling medical equipment purchased with USG funds as being "for PAC only," for example.



PERMISSIBLE ABORTION-RELATED ACTIVITIES BY U.S. AND NON-U.S. NGOs UNDER LONGSTANDING U.S. LAW AND POLICY FOR IMPLEMENTING ORGANIZATIONS CURRENTLY FUNDED BY THE USG, MARCH 2024

TYPE OF ACTIVITY	SOURCE OF	ASSISTANCE	LEGAL OR POLICY AUTHORITY	PERMISSIBLE USE OF USG FUNDS
	NON-USG ASSISTANCE*	USG ASSISTANCE**		See reverse side for additional explanatory text
DISSEMINATION AND UTILIZATION	N OF RESEARCH OR DATA ON	ABORTION		
Engage in demographic, epidemiological or social science research on abortion	GO	GO	USAID Standard Provisions for Non-U.S. Nongovernmental Organizations (October 2023) ¹	The standard provisions included in USAID grant and co-operative agreements state: "Epidemiological or descriptive research to assess the incidence, extent or consequences of abortions is not precluded."
Provide information and data on the risks of unsafe abortion	GO	GO	Helms amendment (1973) ² Siljander amendment (1981) ² Leahy amendment (1994) ²	The provision of information on abortion to the public using USG funds may run afoul of the Helms amendment's restriction on efforts to "motivate" people to practice abortion, which may not be ameliorated by the Leahy amendment's clarification of the term "motivate," and the Siljander amendment's limitation on abortion lobbying. Dissemination of research or data on the incidence and harms of unsafe abortion is likely to be considered a more permissible USG-funded activity in which an NGO might engage, relative to discussion of the public health benefits of safe abortion care.
Provide information and data on public health benefits of access to safe abortion care	GO	CAUTION	Helms amendment (1973) ² Siljander amendment (1981) ² Leahy amendment (1994) ²	An NGO should proceed with caution before engaging in public education activities about the public health benefits of safe abortion when utilizing USG funds and should consult with its USG funding agency or prime partner.
Lobbying for legal or policy changes restricting or expanding abortion	GO	CAUTION	Siljander amendment (1981) ² USAID Standard Provisions for Non-U.S. Nongovernmental Organizations (October 2023) ¹	The definition of what it means to "lobby for or against abortion" under the Siljander amendment has never been formally established, and no legislative history exists to provide guidance as to how the amendment should be interpreted legally. As a result, an NGO should proceed with caution before engaging in advocacy activities related to abortion law or policy using USG funds and should consult with its USG funding agency or prime partner and its funding agreement.
MEETINGS, CONFERENCES, AND W	ORKING GROUPS ON ABORTION	ON		
Participate in a working group or attend a meeting or conference at which the subject of abortion may be discussed	GO	CAUTION	Helms amendment (1973) ² Siljander amendment (1981) ² Leahy amendment (1994) ² USAID Standard Provisions for Non-U.S. Nongovernmental Organizations (October 2023) ¹	An NGO should proceed with caution and consult with its USG funding agency or prime partner if there is any doubt about whether participation in a meeting, conference or working group at which the subject of abortion may be discussed is a permissible use of USG funds. Determinations of the permissibility of using USG funds should take into consideration the following factors: the topics and agenda for the meeting, conference, or working group; the nature of the organization's role or participation; its funding sources; and the scope of work of the USG-funded project and its staff. (Note: Individuals may engage in activities in their private capacity and on their own time that might otherwise be restricted if carried out by the organization itself or on its behalf.)
COUNSELING AND REFERRAL FOR A	ABORTION		I a la a completa de la completa del la completa de la completa del la completa de la completa del la completa de la completa della completa della completa della completa della completa della completa	
Provide information, counseling on and referral for abortion, if legal under national or local law	GO	GO	Leahy amendment (1994) ² Biden-Harris Administration's Commitment to Advancing Sexual and Reproductive Health and Rights Globally statement (June 2023) ³	The Leahy amendment defines the term "motivate" in the Helms amendment to allow the "provision, consistent with local law, of information or counseling about all pregnancy options," which can include abortion in countries in which it is legal. As further clarified in the Biden-Harris administration's June 2023 statement, it is permissible to use USG funds to provide "evidence-based counseling and referral services to clients, in accordance with local law."
PAC AND EMERGENCY MEDICAL OF	BSTETRIC CARE			
Training of medical personal in the treatment of post-abortion complications (e.g., septic or incomplete abortions), regardless of the legal status of abortion	GO	GO	Memo on USAID PAC Programming (2001) ⁴ Updated Foreign Assistance Standardized Program Structure and Definitions (June 2017) ⁵	USG support for PAC includes funding for treatment of complications of induced or spontaneous (miscarriage) abortions, family planning counseling and services, and referral for women from emergency care to other reproductive health care services. Such efforts require investments in training and service delivery, policy development, operations research, and community involvement.
Purchase or distribute MVA kits	GO	STOP	Memo on USAID PAC Programming (2001) ⁴	USAID funds cannot be used to "finance the purchase or distribution of [MVA] equipment for any purpose."
Help strengthen logistics systems that include MVA kits for PAC	GO	GO	Memo on USAID PAC Programming (2001) ⁴	Such support is consistent with USG prioritization of health systems strengthening (including logistics) efforts and is not contrary to the prohibition on the procurement of MVA equipment.
Training in the use of misoprostol for PAC and treatment of PPH	GO	GO	Updated Foreign Assistance Standardized Program Structure and Definitions (June 2017) ⁴	USG funds may be used for training in the use of misoprostol for PPH and PAC.
Procure and distribute misoprostol for use in PAC and treatment of PPH	GO	GO	USAID/BHA Emergency Application Guidelines Pharmaceutical & Medical Commodity Guidance (December 2023) ⁶	USG funds may be used to procure misoprostol oral tablets "for the prevention of post-partum hemorrhage where oxytocin is not available or cannot be safely used, and post-abortion care."
PERFORMANCE OF ABORTION				The 1973 Helms amendment restricts the use of USG assistance to perform "abortion as
Perform abortion in cases of life endangerment, rape or incest	GO	STOP	Helms amendment (1973) ² Biden-Harris Administration's Commitment to Advancing Sexual and Reproductive Health and Rights Globally statement (June 2023) ³	a method of family planning or to motivate or coerce any person to practice abortions." Health care providers and advocates have asserted that the provision of abortion in cases of life endangerment, rape or incest should not be considered use of abortion as a "method of family planning." (Even Republican presidents since Reagan have interpreted this phrase—in the context of GGR implementation—to permit foreign NGOs to perform abortion in the cases of life endangerment, rape, or incest using non–USG funds and to not put at risk their eligibility to receive USG funds in the process.) However, the Biden–Harris administration has remained silent on whether the use of USG funds might be permissible for those exceptions under Helms.
Perform abortion for other indications, including broad health grounds (physical or mental), fetal abnormalities and socioeconomic reasons, or on request	GO	STOP	Helms amendment (1973) ²	All listed indications would be considered to be abortions done for the purpose of family planning (i.e., limiting births) under the Helms amendment.
MEDICATION ABORTION				
Procure or distribute mifepristone	GO	STOP	Helms amendment (1973)²	Mifepristone—together with misoprostol—are part of the two-drug regimen that is used in more than 90 countries around the world to induce a medication abortion. Although there is no known explicit restriction on the subject, USG funds have not been used for the procurement and distribution of mifepristone.
BIOMEDICAL RESEARCH ON SEXUA	AL AND REPRODUCTIVE HEALT	н		
Conduct biomedical research on contraception and multipurpose prevention technologies	GO	GO	Biden amendment (1980)²	Permissible biomedical research on contraception using USG funds includes research on voluntary temporary, permanent and long-acting reversible methods of contraception and on multipurpose prevention technologies for prevention of both pregnancy and sexually transmitted infections. However, the Biden amendment explicitly prohibits biomedical research on methods to perform "involuntary sterilization."
Conduct biomedical research on abortion	GO	STOP	Biden amendment (1980)²	The Biden amendment prohibits the use of USG funds "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."
* Non-USG Assistance: Funds provided by non-USG	cources including own governmen	nt other hilateral donor multila	itaral organization foundation and other	pr privately raised financial support

^{*} Non-USG Assistance: Funds provided by non-USG sources, including own government, other bilateral donor, multilateral organization, foundation and other privately raised financial support

Key

GGR Global Gag Rule manual vacuum aspiration MVA nongovernmental organization

NGO PAC post-abortion care post-partum hemmorhage

USAID U.S. government

U.S. Agency for International Development

Legend

- PERMISSIBLE USING FUNDS FROM ANY SOURCE
- PROCEED WITH CAUTION IF CONSIDERING USE OF USG FUNDING
- NOT PERMISSIBLE USING USG FUNDING

References

- 1. U.S. Agency for International Development. (2023, October 24). Standard Provisions for Non-U.S. Nongovernmental Organizations: A Mandatory Reference for ADS Chapter 303. https://www.usaid.gov/about-us/agency-policy/series-300/references-chapter/303mab
- 2. U.S. Agency for International Development.. Global Health Legislative & Policy Requirements. https://www.usaid.gov/global-health/legislative-policy-requirements. (accessed 2024, March 5)
- 3. U.S. Department of Health and Human Services. (2023, June 24). Biden-Harris Administration's Commitment to Advancing Sexual and Reproductive Health and Rights
- Globally statement. https://www.hhs.gov/about/news/2023/06/24/biden-harris-administrations-commitment-advancing-sexual-reproductive-health-rights-globally.html
- 4. Gillespie, D. (2001, September 10). Memo on USAID PAC Programming. https://www.usaid.gov/sites/default/files/2022-05/duff_memo.pdf
- 5. U.S. Department of State. (2017, June). Updated Foreign Assistance Standardized Program Structure and Definitions. https://www.state.gov/wp-content/uploads/2023/02/The-New-SPSD-June-2017-Accessible-2.16.2023.pdf
- 6. U.S. Agency for International Development (2023, December). USAID/BHA Emergency Application Guidelines Pharmaceutical & Medical Commodity Guidance. https://docs.google.com/document/d/1z3H1iPOvBzOkDzoGaR_TAeddrtzergSV94QLYr6J7JY/edit

Disclaimer

The contents of this publication are intended to convey general information only and should not be considered to constitute legal advice. Information contained herein should not necessarily be interpreted as an explicit or implied endorsement by PAI of the interpretation, implementation and enforcement of U.S. law and policy by the USG. For official clarification of USG law and policy affecting U.S. foreign assistance programs (including global health), an organization should consult directly with the USG department or agency that furnishes its assistance. This includes staff contacts in the Washington headquarters and in field missions about how the donor may or may not want their funds to be used and any restrictions that may be attached to their funds. To request assistance in understanding current USG policies or if you would like to share organizational experiences with these policies, please contact PAI by email at usgpolicyhelp@pai.org.

^{**} USG Assistance: USG foreign assistance funds provided by USAID or State Department through any account in the annual appropriations bill

Further Information

The sources of information contained in this guide include the following documents:

For current legislative and policy restrictions on USG foreign assistance related to abortion (including the Helms, Leahy, Siljander, and Biden amendments) and to voluntarism and informed choice (including the Kemp Kasten amendment), visit:

- U.S. Agency for International Development. Global Health Legislative & Policy Requirements. https://www.usaid.gov/global-health/legislative-policy-requirements
- U.S. Agency for International Development. Voluntarism and Informed Choice. https://www.usaid.gov/global-health/health-areas/family-planning/voluntarism-and-informed-choice

For the memo on USAID PAC Programming, visit:

Gillespie, D. (2001, September 10). Memo on USAID PAC Programming. https://www.usaid.gov/sites/default/files/documents/1864/duff_memo.pdf

For USAID Guidance for Implementing the Siljander Amendment (Prohibition on Lobbying For or Against Abortion), visit:

• U.S. Agency for International Development. (2014, May 22). USAID Guidance for Implementing the Siljander Amendment (Prohibition on Lobbying For or Against Abortion). https://www.usaid.gov/sites/default/files/documents/USAIDGuidanceForImplementingSiljanderAmendment 508.pdf

For the Standard Provisions for Non-U.S. Nongovernmental Organizations, visit:

 U.S. Agency for International Development. (2023, October 24). Standard Provisions for Non-U.S. Nongovernmental Organizations: A Mandatory Reference for ADS Chapter 303. https://www.usaid.gov/about-us/agency-policy/series-300/references-chapter/303mab

For President Biden's Memorandum on Protecting Women's Health at Home and Abroad, visit:

Biden, J. (2021, January 28). Memorandum on Protecting Women's Health at Home and Abroad. *The White House*. https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad

For Biden-Harris Administration's statement on global SRHR and FAQ on first anniversary of the Dobbs decision, visit:

 U.S. Department of Health and Human Services. (2023, June 24). The Biden-Harris Administration's Commitment to Advancing Sexual and Reproductive Health and Rights Globally. https://www.hhs.gov/about/news/2023/06/24/biden-harris-administrations-commitment-advancing-sexual-reproductive-health-rights-globally.html

To create an account and access the Global Health eLearning Center Certification course on U.S. Family Planning and Abortion Requirements, an excellent information resource for program implementers, visit:

• Global Health eLearning Center. (2024, January 1). U.S. Family Planning and Abortion Requirements. https://www.globalhealthlearning.org/course/us-family-planning-and-abortion-requirements

