**JHU ADMINISTRATIVE MEMORANDUM**

**Regarding US Government Policy**

**Protecting Life in Global Health Assistance (Mexico City Policy)**

July 24, 2017

To: JHU Department Faculty and Staff

From: JHURA

RE: Federal Policy on Protecting Life in Global Health Assistance – JHU Implementation

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1. **What is the policy and what does it impact?**
2. On January 23, 2017, President Donald Trump reinstated and expanded the 1984 Mexico City Policy, commonly known by its opponents as the Global Gag Rule, via presidential memorandum. An implementation plan was announced on May 15, 2017.
3. The policy requires foreign non-governmental organizations (NGOs) to certify that they will not “perform or actively promote abortion as a method of family planning,” using funds from any source (including non-U.S. funds), as a condition for receiving U.S. government global family planning assistance and, as of January 23, 2017, any other U.S. global health assistance[[1]](#endnote-1), either directly or indirectly. “Assistance” includes “the provision of funds, commodities, equipment, or other in-kind global health assistance.” Under the expanded policy, “global health assistance” includes funding for international health programs such as those for HIV/AIDS (e.g., PEPFAR), maternal and child health, zika, malaria (e.g., President’s Malaria Initiative), global health security, family planning, and reproductive health.
4. Specifically, this policy prohibits the University from providing federal funding for U.S global health assistance to a foreign NGO (e.g., a subrecipient) that engages in any of the following activities:

* Performing, actively promoting, or conducting public information campaigns about abortions as a method of family planning;
* Lobbying or promoting changes to legalize abortion or keep it legal;
* Providing counseling or information about and, except in very limited circumstances (i.e., rape, incest, or endangerment of the life of the pregnant woman), offering referral for abortion as a family planning option; and
* Providing financial support to any other NGO that conducts such activities[[2]](#endnote-2).

1. On March 2, 2017, the policy went into effect for all new USAID family planning assistance provided through grants and cooperative agreements, as well as for amendments to any existing awards.
2. Affected US Government departments and agencies are now revising and approving the standard provisions of their grants and cooperative agreements in order to reflect the policy going forward. They are also now taking steps to implement the policy in contracts.
3. Prior to entering into an agreement to furnish health assistance to a foreign NGO under a federal award, the University must receive a certification from the NGO certifying that it will not engage in the prohibited activities. The University may be liable to the federal funder for a return of funds for a subrecipient’s violation.
4. The policy is applicable to awards when the award document contains the provision, including a new or modified agreement.
5. **Does the policy apply to my subrecipient?**

The expanded policy now applies to the majority of U.S. bilateral global health assistance furnished by all agencies and departments, approximately $8.8 billion in funds. If the award document contains the provision, the policy applies.

The policy does not apply to national or local foreign governments, public international organizations, and other multilateral entities, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, and Gavi, the Vaccine Alliance. State Department, USAID, and Department of Defense disaster and humanitarian-relief activities are also excluded.

If you have questions as to its applicability, please reach out to your research administration office. Many are being handled on a case-by-case basis.

1. **What is the risk of non-compliance?**
2. Funds provided to the subrecipient under the award must be terminated if the subrecipient violates the terms of the provision.
3. The subrecipient will be required to refund any unexpended amounts furnished to the subrecipient under this award, plus an amount equivalent to that which was used by the subrecipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the subrecipient under the subaward.
4. The recipient will be liable to the Federal funder for a refund for a violation by the subrecipient only if:
   1. the recipient knowingly furnishes health assistance under this award to a subrecipient that performs or actively promotes abortion as a method of family planning, **or**
   2. the subrecipient did not abide by its award terms and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the subrecipient, **or**
   3. the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a subrecipient has violated any of the award terms

**AND**

* 1. the recipient fails to terminate health assistance to the subrecipient, or fails to require the subrecipient to terminate assistance furnished under a subaward that violates any award terms.

1. **What is JHU doing to ensure compliance?**
2. The JHU Principal Investigator, in collaboration with department staff, should review current foreign subrecipients and the source of the funding to determine the potential applicability of the policy (see above). If there is concern or doubt, contact your research administration office.
3. When an agreement includes this provision, JHU will assure compliance by taking the following steps:

**At PROPOSAL stage:**

1. For all named subrecipients at proposal stage for which a possible award will include the Mexico City Policy, JHU departments shall require the prospective subrecipients to sign a certification (“Protecting Life in Global Health Certification”) stating that they are able to comply. These documents shall be uploaded in Coeus.
2. An internal pre-screen worksheet for JHU departments and program teams to help determine the applicability and proposed compliance of an intended subrecipient.

**At AWARD or MODIFICATION stage:**

1. For unnamed subrecipients, as soon as they are identified and prior to the subaward being finalized, your research administration office will ask for a signed Protecting Life in Global Health Certification (the same that JHU is required to sign).
2. The provision will be flowed down to the subrecipient via the subaward.
3. On-going monitoring will be required by the department program teams and an affirmative statement will be incorporated for each modification, to include change of scope and/or other modifications, to help ensure JHU is monitoring subaward activities with this provision in mind.

**Questions?**

**Please contact your respective office of research administration for more information.**

References: State Department, USAID, and Kaiser Family Foundation.

1. This is a significant expansion of scope under Trump administration. It now applies to the vast majority of U.S. bilateral global health assistance, including funding for HIV (PEPFAR), maternal and child health, malaria, nutrition, and other programs. [↑](#endnote-ref-1)
2. The new rule includes exceptions for a) abortion if mother’s life is endangered; (b) abortion in case of rape or incest; (c) treatment of abortion related illnesses or injuries (Post Abortion Care); and (d) a passive answer to a pregnant woman who has already decided to have a legal abortion if required by medical ethics [↑](#endnote-ref-2)