

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALLIANCE FOR OPEN SOCIETY
INTERNATIONAL, INC., et al.,

Plaintiffs,

v.

UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT, et al.,

Defendants.
-----X

05 Civ. 8209 (VM)

**DECLARATION OF
BENJAMIN H. TORRANCE**

BENJAMIN H. TORRANCE, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am an Assistant United States Attorney in the office of Michael J. Garcia, United States Attorney for the Southern District of New York, attorney for defendants in the above-captioned action. I have been assigned to defend this matter and am familiar with the proceedings herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Department of Health and Human Services Guidance, 72 Fed. Reg. 41,076, dated July 23, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of the United States Agency for International Development Acquisition & Assistance Policy Directive No. 05-04 Amendment 1, dated July 23, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of the Global Health Council membership list, as it appeared on the Global Health Council web site, www.globalhealth.org, on March 10, 2008.

5. Attached hereto as Exhibit D is a true and correct copy of the Complaint filed in *DKT International, Inc. v. United States Agency for International Development*, No. 05-cv-1604.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 17, 2008

/s/ Benjamin H. Torrance
BENJAMIN H. TORRANCE
Assistant United States Attorney
Telephone: 212.637.2703
Fax: 212.637.2702

Exhibit A

Financial Group, Inc., and thereby indirectly acquire voting shares of Pan American Bank, both of Chicago, Illinois.

B. Federal Reserve Bank of St. Louis
(Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Central Bancompany, Inc.*, Jefferson City, Missouri; to acquire 100 percent of the voting shares of Millstadt Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Millstadt, both of Millstadt, Illinois.

Board of Governors of the Federal Reserve System, July 23, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-14446 Filed 7-25-07; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Global Health Affairs; Guidance Regarding Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003

AGENCY: Office of Global Health Affairs, HHS.

ACTION: Guidance.

SUMMARY: Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the "Leadership Act"), P.L. No. 108-25 (May 27, 2003), 22 U.S.C. 7631(f), prohibits the award of grants, contracts or cooperative agreements for activities funded under the Act to any organization that does not have an explicit policy opposing prostitution and sex trafficking. Section 301(f) states as follows:

Limitation.—No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.

The following guidance provides additional information on the policy requirement expressed in this law for entities that receive grants, contracts, or cooperative agreements from the U.S. Department of Health and Human Services ("HHS") to implement programs or projects under the authority of the Leadership Act. Specifically, it describes the legal, financial, and organizational separation that should exist between these recipients of HHS funds and an affiliate organization that engages in activities that are not

consistent with a policy opposing prostitution and sex trafficking.

FOR FURTHER INFORMATION CONTACT:

Maggie Wynne, Office of Global Health Affairs, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 639H, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: This guidance is designed to provide additional clarity for Contracting and Grant officers, Contracting Officers' Technical Representatives, Program Officials and implementing partners (e.g., grantees, contractors) of HHS regarding the application of language in Notices of Availability, Requests for Proposals, and other documents pertaining to the policy requirement expressed in 22 U.S.C. 7631(f), which provides that organizations receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking (the "policy requirement").

In enacting the statute from which this requirement originates, the Leadership Act, Congress developed a framework to combat the global spread of HIV/AIDS, tuberculosis, and malaria. As a part of that Act, to ensure that the Government's organizational partners will not undermine this goal through the promotion of counterproductive activities, the Leadership Act provides that all funding recipients, subject to limited exceptions, must have a policy explicitly opposing prostitution and sex trafficking. It is critical to the effectiveness of Congress's plan and to the U.S. Government's foreign policy underlying this effort, that the integrity of Leadership Act programs and activities implemented by organizations receiving Leadership Act funds is maintained, and that the U.S. Government's message opposing prostitution and sex trafficking is not confused by conflicting positions of these organizations.

Accordingly, the U.S. Government provides this "Organizational Integrity" Guidance to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with the policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided that such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking, as specified in this guidance. To maintain program integrity, adequate separation as outlined in this guidance is required between an affiliate which expresses views on prostitution and sex trafficking contrary to the government's

message and any federally-funded partner organization.

The criteria for affiliate independence in this guidance is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in *Velzquez v. Legal Services Corporation*, 164F.3d 757,767 (2d cir. 1999), and *Brooklyn Legal Services Corp. v. Legal Services Corp.*, 462 F.3d 219, 229-33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of federal funding.

This guidance clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in the guidance. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking maybe attributed to the recipient organization and thus to the government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex trafficking.

This guidance may be shared with HHS implementing partners. *Guidance:* HHS contractors, grantees and recipients of cooperative agreements ("Recipients") must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking ("restricted activities"). A recipient will be found to have objective integrity and independence from such organization if:

- (1) The affiliated organization is a legally separate entity;
- (2) The affiliated organization receives no transfer or Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and
- (3) The Recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors

relevant to this determination shall include but will not be limited to:

- (i) The existence of separate personnel, management, and governance;
- (ii) The existence of separate accounts, accounting records, and timekeeping records;
- (iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;
- (iv) The extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and

(v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conference and press or public statements.

EFFECTIVE DATE: This guidance is effective on the final date of publication.

Dated: July 23, 2007.

William R. Steiger,
Director.

[FR Doc. 07-3658 Filed 7-23-07; 11:59 am]

BILLING CODE 4150-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-0666]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920-0666)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and to promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks.

Healthcare institutions that participate in NHSN voluntarily report their data to CDC using a web browser-based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. This application to OMB includes a significant increase in the number of burden hours to the previously approved data collection. The increase is due to inclusion of new forms and an increased number of respondents.

NHSN was first approved by OMB in 2005 and CDC proposes to revise this data collection by adding new modules to the NHSN as well as modifying currently approved forms. Four new forms are proposed: (1) Healthcare Worker Influenza Vaccination form; (2) Healthcare Worker Influenza Antiviral Medication Administration form; (3) Pre-season survey on Influenza Vaccination Programs for Healthcare Workers; and (4) Post-season Survey on Influenza Vaccination Programs for

Healthcare Workers. The purpose of these new forms is to help participating healthcare institutions and CDC to: (1) Monitor influenza vaccination coverage among healthcare personnel at individual facilities and to provide aggregate coverage estimates for all participating facilities; (2) monitor progress towards attaining the Healthy People 2010 goal of 60% vaccination coverage among healthcare personnel; (3) monitor influenza vaccination coverage by ward/unit of the facility or occupational group so that areas or groups with low vaccination rates can be targeted for interventions; (4) monitor adverse reactions related to receipt of the vaccine or receipt of antiviral medications; and (5) assess the characteristics of influenza vaccination programs pre- and post-influenza season to identify practices associated with high immunization rates. The total estimated annual burden for these forms is 13,800 hours.

CDC is proposing to add an additional form, Central Line Insertion Practices Monitoring Form, to the Patient Safety Component Device Associated Module. This new form will enable participating facilities and CDC to (1) monitor central line insertion practices in individual patient care units and facilities and provide aggregate data for all participating facilities (facilities have the option of recording inserter-specific adherence data); (2) link gaps in recommended practice with the clinical outcome both in individual facilities and for all participating facilities; (3) facilitate quality improvement by identifying specific gaps in adherence to recommended prevention practices, thereby helping to target intervention strategies for reducing central line infection rates. The total estimated annual burden for this form is 12,500 hours.

CDC proposes to add the Multi-Drug Resistant Organism (MDRO) Prevention Process Monitoring Module to the Patient Safety Component. This module consists of four forms: (1) MDRO Prevention Process Monitoring Form; (2) MDRO Infection Event Form; (3) Laboratory-identified MDRO Event Form; and (4) Laboratory-identified MDRO Event Summary Form. The purpose of these forms is to: (1) Monitor processes and practices in individual patient care units and facilities and to provide aggregate adherence data for all participating facilities; (2) link gaps in recommended practice with the clinical outcome (i.e., MDRO infection) both in individual facilities and for all participating facilities; (3) facilitate quality improvement by identifying specific gaps in adherence to

Exhibit B



USAID
FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: July 23, 2007

AAPD 05-04 Amendment 1

Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

Subject Category: ACQUISITION MANAGEMENT, ASSISTANCE

Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: ☐ Is New Replaces/ X Amends CIB/AAPD No: 05-04

Applicable to:

- ☒ Existing awards; ☐ Modification required
- ☐ No later than
- ☒ As noted in guidance below
- ☒ RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC
- ☐ Other or N/A

Precedes change to:

- AIDAR Part(s) Appendix
- ☒ USAID Automated Directives System (ADS) Chapter 302, 303, and 308
- ☒ Code of Federal Regulations 22 CFR 226
- ☐ Other
- ☐ No change to regulations

New Provision/Clause Provided Herein

(Signed copy on file)

Michael F. Walsh
Director

1. PURPOSE:

The purpose of this AAPD amendment is to provide to COs and AOs criteria for determining whether or not a USAID contractor or recipient complies with the eligibility and limitations provisions in AAPD 05-04, if it has an affiliation with an organization that may not be in compliance.

Required Actions:

- (1) COs and AOs must consider the "Organizational Integrity Guidance" in the Guidance section below when determining a prospective or existing contractor or assistance recipient's eligibility or compliance with the provisions in AAPD 05-04.
- (2) COs and AOs must obtain clearance from their legal counsel before issuing any written determination pertaining to USAID awards that include the provisions in AAPD 05-04.

2. BACKGROUND:

This guidance is designed to provide additional clarity for Contracting and Agreement officers, Contracting Specialists, Cognizant Technical Representatives, Health Officers and our implementing partners (e.g., grantees, contractors) regarding the application of the policy requirement expressed in 22 U.S.C. § 7631(f), which provides that organizations receiving Leadership Act funds ("Recipient organizations" or "Recipients") must have a policy explicitly opposing prostitution and sex-trafficking (the "policy requirement").

In enacting the statute from which this requirement originates, the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the "Leadership Act"), Congress developed a framework to combat the global spread of HIV/AIDS, tuberculosis and malaria. As part of that Act, to ensure that the Government's organizational partners will not undermine this goal through the promotion of counterproductive activities, the Leadership Act provides that all funding recipients, subject to limited exceptions, must have a policy explicitly opposing prostitution and sex trafficking. It is critical to the effectiveness of Congress's plan and to the U.S. Government's foreign policy underlying this effort, that the integrity of Leadership Act programs and activities implemented by organizations receiving Leadership Act funds is maintained, and that the U.S. Government's message opposing prostitution and sex-trafficking is not confused by conflicting positions of these organizations.

Accordingly, the U.S. Government provides this Organizational Integrity Guidance to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with the policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided that such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex-trafficking, as specified in this guidance. To maintain program integrity, adequate separation as outlined in this guidance is required between an affiliate which expresses views on prostitution and sex-trafficking contrary to the government's message and any federally-funded partner organization.

The criteria for affiliate independence in this guidance is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in Velazquez v. Legal Services Corporation, 164 F.3d 757, 767 (2d Cir. 1999), and Brooklyn Legal Services Corp. v. Legal Services Corp., 462 F.3d 219, 229-33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of federal funding.

This guidance clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in the guidance. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking may be attributed to the recipient organization and thus to the Government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex-trafficking.

This guidance may be shared with USAID implementing partners.

See also AAPD 05-04.

3. GUIDANCE:

CO's and AO's must consider the below guidance when evaluating whether a recipient's policy opposing prostitution may be implicated by an affiliate of the recipient.¹

Note that the term "Recipient" used below applies to both contractors and the recipients of grants or cooperative agreements.

Organizational Integrity Guidance:

USAID contractors, grantees and recipients of cooperative agreements ("Recipients") must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex-trafficking ("restricted activities"). A Recipient will be found to have objective integrity and independence from such an organization if:

- (1) The affiliated organization is a legally separate entity;

¹ Regarding Required Action (2), the Federal Acquisition Regulation (FAR) subpart 2.101 defines "Affiliates" as follows:

"Affiliates" means associated business concerns or individuals if, directly or indirectly—

- (1) Either one controls or can control the other; or
- (2) A third party controls or can control both.

This definition is not inconsistent with the guidance provided in this amendment to AAPD 05-04. There is no corresponding definition in USAID assistance regulations.

(2) The affiliated organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and

(3) The Recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. USAID will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;

(iv) The extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and

(v) The extent to which USAID, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conferences and press or public statements.

4. POINT OF CONTACT:

USAID CO and AO may direct their questions about this AAPD amendment to Diane Bui, GC/GH & EGAT, Phone (202) 712-0529 e-mail: dibui@usaid.gov.

Contractors, recipients, and prospective offerors for contracts or assistance awards must direct their questions to the cognizant Contracting Officer or Agreement Officer for the award.

Exhibit C

Global Health Council

Printer-Friendly Version | [Return to Web-Friendly Version](#)

Member Organizations

[View Map](#)

The Global Health Council is proud and inspired by the quality and variety of work conducted by our organizational members. Highlighting the contributions these members make to improving global health is paramount to the work of the Council.

[Learn more about membership with the Global Health Council](#)

Find the Members Nearest To You

Check out the [Global Map](#) of our member organizations

We invite you to click on this icon  with a member's name to view a video of their work.

[A](#)|[B](#)|[C](#)|[D](#)|[E](#)|[F](#)|[G](#)|[H](#)|[I](#)|[J](#)|[K](#)|[L](#)|[M](#)|[N](#)|[O](#)|[P](#)|[Q](#)|[R](#)|[S](#)|[T](#)|[U](#)|[V](#)|[W](#)|[Y](#)

A

[Abbott Fund](#)

[Alliance Rights, Nigeria](#)

[Abt Associates Inc.](#)

[Alpha Vision Alliances International](#)

[Academic Alliance Foundation](#)

[Alternate Visions LLC](#)

[Academy for Educational Development](#)

[Amansan Aid Ghana](#)

[ActionAid India](#)

[American College of Nurse-Midwives](#)

[ActionAid International USA](#)

[American Dental Association \(ADA\)](#)

[Advamed](#)

[American International Health Alliance](#)

[Adventist Development & Relief Agency International \(ADRA\)](#)

[American Jewish World Service](#)

[American Medical Association](#)

[Aeras Global TB Vaccine Foundation](#)

[American Osteopathic Association](#)

[Afghans for Civil Society, Inc.](#)

[American Public Health Association](#)

[Africa Fighting Malaria](#)

[American Red Cross](#)

[African Heritage International](#)

[American Refugee Committee](#)

[African Medical & Research Foundation,](#)

American Society of Tropical Medicine
and Hygiene

American Zinc Association

AmeriCares Foundation, Inc.

AmericaShare

ANERELA+

ASEAN Institute for Health Development

Asian Forum of Parliamentarians on
Population and Development

Associacao Grupo AIDS, Apoio, Vida,
Esperanca (AAVE Group)

Asociacion Animo Y Aliento

Asociacion Civil Lazos De Vida

Association for Better Community Health

Association of Nurses in AIDS Care

Association of Public Health Laboratories

Association of Schools of Public Health

Association of Specialized Medical
Societies of Kyrgyz Republic

Association RAMA

ATMATA Kendram

Axios Foundation

Axios International

Ayushi Biotech

Inc.

African Youth Development Foundation

Africare

Afro Global Alliance

Agape in Action

Ahenbronoso Care Foundation

AIDS Accountability International

AIDS Action Council

AIDS Action Uganda

AIDS Alliance in Nigeria

AIDS Cell, Ibn Sina Academy

AIDS Prevention & Education Society

AIDS Prevention Society of Pakistan

AIDS Project L.A.

AIDS Society of Barbados Inc.

AIDS Vaccine Advocacy Coalition

Aksion Plus

Albert B. Sabin Vaccine Institute

Albert Schweitzer Fellowship

Alcohol & Drug Abuse Prevention Team

All Nations Associates Ltd.

Alliance for the Prudent Use of
Antibiotics

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B

Baba Foundation

Badilika STI / HIV / AIDS Project

Balaji Medical and Educational Trust

Balm in Gilead, Inc.

Batey Relief Alliance, Inc.

Baylor Black Sea Foundation

Becton Dickinson & Co.

Ben Gurion University of the Negev M.
D. Program in International Health and
Medicine in collaboration with Columbia
University Health Sciences 

Bhutan Health Organization

Bickford-Land Clinic for Mother's and
Children

Bidii Community Development Group

Bill & Melinda Gates Foundation

Billings Resource Centre

BIO Ventures for Global Health

Birthing Project

BOSS & CIPCA

Books of Hope

Boston University School of Public
Health - Dept. of International Health

Brandeis University - The Heller School
for Social Policy and Management

Bristol-Myers Squibb Company

Broad Green Health Foundation

BroadReach Healthcare

The Brush Foundation

Burness Communications, Inc.

Bwafwano Community Home Based
Care Organization

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C

Campaigners for An AIDS Free Society

CARE

Catholic Community of Point-G

Catholic Health Association of India

Catholic Medical Mission Board, Inc.



CCD Bangladesh

Center for African Family Studies

Chembio Diagnostics

Chemonics International

Child Family Health International

Child Health Foundation

Chomba Youth Association

Christian Children's Fund

Christian Community Development
Burundi

CEDPA The Center for Development and
Population Activities

Christian Connections for International
Health

Center for Development Communication

Church of Christ in Nigeria

Center for Environment Preventive
Healthcare and Counseling

CIDRZ Foundation

Center for Health and Gender Equity

Columbia University, Mailman School of
Public Health

Center for Health and Social Research

Commissioned Officers Foundation for
the Advancement of Public Health

Center for Healthworks, Development
and Research

CommonHealth Initiative

Center for International Health

Communications Consortium Media
Center

Center for Strategic and International
Studies

Community Action for Rural
Development

Centre for Health and Nutrition
Promotion

Community Development Associates

Cera Products, LLC

Community Development Foundation
Jacobabad

CHABHA, Inc.

Community Health Link

Charity Network Services NGO

CONRAD Program 

Chautauqua Institution

Constella Futures

CORE Group

Curamericas Global, Inc.

Curatio International Foundation

Cure2Children Foundation

Cultural Practice, LLC

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D

Dartmouth College

David and Lucile Packard Foundation

De Beers Consolidated Mines Ltd.

Deaconess Parish Nurse Ministries

Deepam Educational Society for Health

Delice

Department of Community Health, St
Marthas Hospital

Department of Health, Eastern Cape

Development of Environmental and
Social Health

Developing the Family Together

Dialogue for Development Forum

Dialogue International for Southern
Africa Region

Dimagi, Inc.

Discovery Channel Global Education
Partnership

DKT International

Doctors of the World

Doris Duke Charitable Foundation

Duke University Global Health Institute

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E

Earth Institute at Columbia University

Eden Home Health Centre

Elizabeth Glaser Pediatric AIDS
Foundation

Embu Youth AIDS Advocates

Emerging Markets Group

Emory University Rollins School of
Public Health

Emunio Aps

EngenderHealth

Episcopal Relief and Development

EPOS Health Consultants USA

ESE-Benin

Estonian Association Anti-Aids

Estonian Network of People Living with
HIV and AIDS

Exxon Mobil Corporation

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F

Families USA

Family Care International

Family Focus International, Ghana

Family Health International

Family Health International - Nepal

Family Planning & Sexual Health
Association of Lithuania

Family Violence Prevention Fund

Female Cancer Program

The Female Health Company

The Fistula Foundation

Fleishman-Hillard

Fogarty International Center / NIH

Ford Foundation

Forum One Communications

Foundation Builders, Nigeria

Foundation for Advancement of
International Medical Education and
Research

Foundation for AIDS Research (amfAR)

Foundation for Health Research &
Development

Foundation for Hospices in Sub-Saharan
Africa

Foundation for Human Horizon

Foundation for Studies and Research on
Women

Fountain of Hope Community Initiative

Francois-Xavier Bagnoud Center for
Health & Human Rights

Francois-Xavier Bagnoud U.S.
Foundation

Friends for Life HIV/AIDS Team

Friends of the Global Fight

FSG-Social Impact Advisors

Future Generations

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G

The GAVI Fund

General Board of Church & Society
United Methodist Church

Generation Conscience D'Haiti

GlaxoSmithKline Biologicals

Global Advancement Initiative

Global Alert for Defence of Youth and
the Less Privileged (GADYLP)

Global Alliance for TB Drug Development

Global Alliance to Eliminate Lymphatic
Filariasis (GAELF)

Global Business Coalition on HIV/AIDS

Global Environmental Health Solutions

Global Forum for Health Research

Global Health Action

Global Health Education Consortium

Global Health Initiative

Global Health Strategies

Global Health Through Education,
Training and Service

Global REACH at the University of
Michigan Medical School

Global Vision Tanzania

GlobeMed

Grassroot Soccer

Greater Involvement of People Living
with HIV/AIDS

Grounds for Health

The Guttmacher Institute

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H

Habitat and Care Mali

HADAF

Halt AIDS

Harvard School of Public Health

Health and Development International

Health for Humanity

Health Metrics Network

Health Research and Educational Trust

Health Volunteers Overseas

Healthy Mothers - Healthy Babies

Helen Keller International

Hesperian Foundation

Himalayan Cataract Project

Hope for a Healthier Humanity
Foundation

Hope for AIDS Outreach

Hope for the Living

Hope for the Youth Foundation, Inc.

Hope on Africa Program

HospiVision

Heifer International

Humanitarian Campaign Organization

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I

Ibis Reproductive Health

IDA Foundation

Identity, Merge, and Action (AIM)

Immtech International

Indonesian Forum of Parliamentarians
on Population & Development

Infante Sano

Infection Control Society Pakistan

Infectious Diseases Society of America

Institute for Healthcare Improvement

Institute for OneWorld Health

Institute for Reproductive Health,
Georgetown University Medical Center

Institute for Sustainable Communities

Integrated Rural Development
Programme

Integrity Health Projects

Inter-Confessional AIDS Network
Program

Interaction

Interchurch Medical Assistance, Inc.
(IMA)

International AIDS Candlelight Memorial

International AIDS Vaccine Initiative

International Center for Equal
Healthcare Access (ICEHA)International Center for Research on
WomenInternational Centre for Diarrheal
Disease Research - BangladeshInternational Federation of Medical
Students' Associations - InternationalInternational Federation of Medical
Students' Associations - USA

International Health Center in Taiwan

International Health Ministries,
Presbyterian Church, USA

International HIV/AIDS Alliance (USA)

International Hospital for Children

International Institute for Spiritual
Ergonomics

International Medical Corps

The International Partnership for
MicrobicidesInternational Planned Parenthood
Federation, International OfficeInternational Planned Parenthood
Federation/Western Hemisphere Region,
Inc.

International Relief and Development



International Association for the Study
of Pain

International Association of Infant Food
Manufacturers (IFM)

International Association of Medical
Colleges

International Rescue Committee

International Trachoma Initiative

International Vaccine Institute

International Women's Health Coalition

INTRAHEALTH (formerly University of
North Carolina, INTRAH)

Ipas

Izumi Foundation

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J

James R. Jordan Foundation

Jay Weiss Center for Social Medicine
and Health Equity

Jeeri Neotech International

JHPIEGO Corporation

John Snow, Inc.

Johns Hopkins University Bloomberg
School of Public Health 

Johnson & Johnson Company

The JOSHUA Foundation

Josiah Macy, Jr. Foundation

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K

Kamuzu College of Nursing

Kara Counseling and Training Trust

Kawempe Women Development
Association

Kawish Resource Center

Kenya AIDS Non-Governmental
Organization Consortium

Kenya United Christian Churches

Kishan Shahojugi Unnayan Shangadhan

Kisumu Initiative for Positive
Empowerment

Kisumu Medical Training College

Kisumu Ministry of Health

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L

Le Kinkeliba

Life Messengers

LearnWell Global Low-Cost Health Initiative

Livelihood NGO

Legends Society

London School of Hygiene and Tropical Medicine

Library and Saving Ministry

LSM Puskokatara

Life Care Foundation

Life for Relief and Development

Life Link Organization

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M

Maine Medical Center - Division of International Health Improvement

Medical Mission Sisters

Management Sciences for Health

Mennonite Central Committee

The Manoff Group, Inc.

Merck & Co., Inc.

MAP International

Mercy Corps International

Marie Stopes International

MIDEGO

Marlboro College

Ministry of Basic Education, Sport and Culture: HIV and AIDS Mangement Unit

MBAs Without Borders

Ministry of Health and Family Welfare - Bangladesh

McKinsey & Co., Inc.

Minnesota International Health Volunteers

Media Network on HIV/AIDS and Development Nigeria

Medical Bridges

Mount Sinai Global Health Center

Medical Care Development, Inc.

Muduuma Widows Association

Medical Education Cooperation With Cuba (MEDICC)

Mutual Advancement & Reconciliation in Society (MARS)

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N

National Alliance of State and Territorial
AIDS Directors

National Bureau of Asian Research,
Center for Health & Aging

National Institute of Health and Family
Welfare

National Network for Youth

Natural Doctors International

Natural Initiative for Voluntary Blood
Donors NGO

Navjyot Foundation

Nepal Medical College

Network for Children, Youth and Women
Infected and Affected

Network Forum

Network of PLWAs in Nigeria

Network of Zambian PLHA

The Network: Towards Unity for Health

New Lifestyle Resource Centre

New York University Master's Program
in Public Health

NGO Action Against AIDS

Nkasi District Council - Health
Department

Novartis

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O

Odyssey Arts Pioneers

Ohio State University College of Medicine

OmniMed

Oncology Consulting International

One Tribe Foundation

One Village Foundation

Open Society Institute Public Health
Program

Operation Blessing

Operation Smile International

Ovarian Cancer Research Fund

OWN-Uganda

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P

[PACE-Medspanish](#)

[Pact](#)

[Pakistan Voluntary Health & Nutrition Awareness](#)

[Pan American Health Organization \(PAHO\)](#)

[Pangaea Global AIDS Foundation](#)

[Pasuruan City AIDS Commision](#)

[Pathfinder International](#)

[Pedagogue Milestones](#)

[Peer Education Program-Ghana](#)

[Peers for a Positive Way of Life](#)

[Pelican Foundation](#)

[People's Alliance To Combat HIV/AIDS](#)

[People's Health Organization - India](#)

[Per Ankh, Inc.](#)

[Pfizer, Inc.](#)

[PhRMA](#)

[Physicians for Human Rights](#)

[PLAN International USA](#)

[Planet Aid, Inc.](#)

[Population Action International](#)

[Population Council](#)

[Population Foundation of India](#)

[Population Media Center](#)

[Population Reference Bureau](#)

[Population Services International](#)

[Population Services Pilipinas Inc.](#)

[Positive Life Association of Nigeria](#)

[Prevent Human Trafficking Institute](#)

[Procter & Gamble](#)

[Program for Appropriate Technology in Health \(PATH\)](#)

[Project Concern International](#)

[Project HOPE](#)

[Prolife AIDS League](#)

[ProLiteracy Worldwide](#)

[Public Health Institute](#)

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Q

[Quotidien Nokoue](#)

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R

Raising Hopes Foundation

Rajprachasamasai Foundation

Raptim International Travel

Reach Out

Realizing Rights

Red Initiatives

Regional Rural Development
Organization

Relief International

Republican Center of Hygiene,
Epidemiology & Public Health; AIDS
Prevention Dept

Rescue Arms Network - RANET

Research!America

Resource & Policy Exchange

Rift Valley Voluntary Counsellors

RTI International 

Rural Educational and Environmental
Development Society (REEDS)

Rural Educational Development and
Welfare Organization

Rural Health Promotion Initiative

Rwanda Village Concept Project

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S

Saint Michael's College

The Salvation Army World Service Office

Sanofi Pasteur

Save Life Project

Save Our Soil Organization

Save the Children

Scientific Evaluation for Global Action
(SEGA)

Scientific and Productive Center for
Preventive Medicine

Seeds for Life, Inc.

Seldon Laboratories

Self-Help Initiative for Sustainable

Sky Health Influence

Social & Scientific Systems, Inc.

Social Awareness Service Organization

Social Research Institute

Sociedad Mexicana De Parasitologia AC

Society for Awareness of Human
Development and Rights

SOS Foundation

South Africa Partners

State Institute of Health and Family
Welfare, Rajasthan

Stay Alive

Step Forward

Development, Inc.

Sensitization Bureau

Serve Train Educate People's Society

Share and Care in Medico, Nepal

Shinyanga Foundation Fund

Sholad International Resources and
Information Center

Shreyansh Foundation Society

SIECUS

Silence Kills Support Centre

Stephen Lewis Foundation

Students Partnership Worldwide

SWAA (Society for Women and AIDS in
Africa) - Sudan Chapter

Swasthya Community Health Partnership

Swasthya/IIME

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T

Tanzania Disabled Persons Movement

Think Youth Independent Association

Thundermist Foundation

Touch Foundation

Touro University-California

TropicalClinics, Inc.

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U

UCLA Global Health Training Program

Uganda Assemblies of God

Umodzi Community Organization

United Care Foundation

United Nations Association of the USA


United Negro College Fund Special
Programs Corporation

United Rural Development Organization

United Science of Africa (USA)

University of Maryland-Baltimore,
Division of International Health

University of Michigan, Population
Fellows Program

University of Michigan, School of Public
Health 

University of Nairobi - Institute of
African Studies

University of North Carolina, Office of
Global Health, School of Public Health



U.S. Coalition for Child Survival

United Youth Front International

Universidad Peruana Cayetano Heredia,
Global Health Peru Program


University Coalitions for Global Health

University of Alabama, Birmingham

University of Benin Public Health
Education Department

University of California, San Francisco,
Global Health Sciences

University of Denver Graduate School of
International Studies

University of Iowa, Global Health
Studies Program 

University of Northern Florida Center for
Global Health and Medical Diplomacy

University of Pennsylvania School of
Medicine

University of Pennsylvania School of
Nursing

University of the Witwatersrand AIDS
Research Institute

University of Vermont

University of Virginia Center for Global
Health 

University of Washington, Department
of Global Health

University of Washington Medex
Northwest PA Program

University of Washington School of
Public Health and Community Medicine

University Research Corporation, Center
for Human Services

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V

Venezuelan Organization of Youth for
the United Nations

Venture Strategies for Health and
Development

Vermont Council on World Affairs

Victim AIDS Foundation Ghana

VIMOCHANA

Voice of People

Vwawa District Hospital

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W

Walio Katika Mapambano Na AIDS
Tanzania

WAVES International, Inc.

West African Framework for Global
Health

White Ribbon Alliance for Safe
Motherhood

William and Flora Hewlett Foundation

Winston-Salem State University, School
of Health Sciences

Women's Action & Resource Initiative
(WARI)

Women's Commission for Refugee
Women & Children

Workplace Dignity Institute

World Alliance for Youth Empowerment

World Learning

World Lung Foundation

World Vision USA

Worldwide Fistula Fund

Worldwide Orphans Foundation

Wyman Worldwide Health Partners LLC

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Y

Yale School of Public Health - Global
Health Department

Youth Empowerment Foundation

Youth Enhancement International

Youth With A Vision

Youths for Impact

Youthful Initiatives for Economic,
Environmental, Educational, & Large-
Scale Development (YIELD)

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Z

Zambia National Response to AIDS

Zienzele Foundation

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Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DKT INTERNATIONAL, INC.

1701 K Street, NW, Suite 900,

Washington, DC 20006

Plaintiff,

V.

**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

Ronald Reagan Building

Washington, D.C. 20523-0016

-and-

**ANDREW S. NATSIOS, in his
Official Capacity as ADMINISTRATOR,
U.S. AGENCY FOR INTERNATIONAL
DEVELOPMENT.**

Defendants.

COMPLAINT

COMES NOW Plaintiff DKT International, Inc. and files this Complaint against the United States Agency for International Development, and its Administrator, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this civil rights action seeking declaratory and injunctive relief to protect Plaintiff's First Amendment right to freedom of speech. Plaintiff challenges the constitutionality of the United States Agency for International Development's ("USAID") enforcement of United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of

2003 (“Global AIDS Act”), 22 U.S.C.A. § 7601 *et seq.*, a law that conditions an organization’s eligibility for USAID funding upon that organization declaring its adherence to a particular government policy. Plaintiff also challenges USAID’s Acquisition & Assistance Policy Directive 05-04, the implementing regulations issued by the Director of the Office of Acquisition & Assistance on June 9, 2005. These regulations are unconstitutional on their face because they make otherwise eligible organizations ineligible for USAID grants or contracts if they do not expressly adopt the government’s policy on prostitution.

JURISDICTION AND VENUE

2. This case arises under the First Amendment to the United States Constitution. This Court has jurisdiction over the Plaintiff’s federal constitutional claims under 28 U.S.C. § 1331.

3. Venue is proper in this District under 28 U.S.C. § 1391 because USAID is a U.S. Government agency with its principal place of business in this District.

PARTIES

4. Plaintiff DKT International is a not-for-profit corporation with headquarters at 1701 K Street, NW, Suite 900, Washington DC 20006. As one of the largest providers of family-planning and HIV/AIDS services, DKT International provides family planning and HIV/AIDS prevention programming in Brazil, China, Egypt, Ethiopia, India, Indonesia, Malaysia, Mexico, Philippines, Sudan, and Vietnam. DKT’s programs currently serve just under 10 million couples. It has been eligible for, and has received USAID funds for HIV/AIDS prevention programs.

5. Defendant USAID is a U.S. Government Agency with headquarters at the Ronald Reagan Building, Washington, D.C. 20523-0016.

6. Defendant Andrew S. Natsios is the Administrator of USAID. He is sued in his official capacity.

FACTUAL BACKGROUND

The Legal Context

7. In 2003, President Bush signed the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (“Global AIDS Act”), 22 U.S.C.A. § 7601 *et seq.* into law. The Act contains two restrictions regarding prostitution. The first restriction, 22 U.S.C.A. § 7631(e), prohibits the use of U.S. Government funds under the Act from being spent on activities that “promote or advocate the legalization or practice of prostitution or sex trafficking.” The second restriction provides, “no funds made available to carry out this Act may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.” 22 U.S.C.A. § 7631(f). The legislation exempts the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AID Vaccine Initiative and United Nations agencies.

8. Responding to a request from the Department of Health and Human Services, the Department of Justice concluded in early 2004 that the provisions of 22 U.S.C.A. § 7631(f) could constitutionally be applied only to foreign organizations operating overseas in view of First Amendment considerations. In September 2004, the Department of Justice reversed itself. In the second opinion letter, the Department of Justice concluded, “[I]n these circumstances, given that the provisions do not raise separation of powers concerns and that there are reasonable arguments to support their constitutionality, we believe that HHS may implement these provisions.”

9. On June 9, 2005, USAID released an Acquisition & Assistance Policy Directive (AAPD), titled “AAPD 05-04 Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 -- Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking.” This policy “now appl[ies] to U.S. organizations as well as foreign organization,” and “require(s) recipients to agree that they oppose prostitution and sex trafficking.” The AAPD 05-04 provided clauses “to be included as new standard provisions for assistance agreements and contracts that include HIV/AIDS funds.” In particular, AAPD 05-04 requires the following provision:

as a condition of entering into this agreement or any subagreement, a non-governmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking.

A copy of AAPD 05-04 is attached as Exhibit A.

DKT International’s Work in Vietnam And USAID Funds

10. Plaintiff DKT International is a U.S.-based, charitable organization providing family-planning and HIV/AIDS prevention services in eleven countries around the world. DKT’s social marketing makes products and services affordable to poor populations by subsidizing the price and by making effective use of marketing techniques and private sector networks to deliver products and services. DKT International also regularly shares its observations, information, research, and conclusions relating to its work with the public at large in the United States, as well as with other non-governmental organizations through articles published in relevant journals, books, and on its website.

11. Since 1993, DKT International has conducted innovative anti-HIV/AIDS and family planning social marketing programs in Vietnam, distributing over four hundred million condoms throughout Vietnam's sixty-four provinces.

12. DKT International receives funds from multiple donors around the world for its anti-HIV/AIDS work -- including other government donors, such as Australia, Germany, and the United Kingdom. In addition, it receives USAID funding for anti-HIV/AIDS work, often through a subgrant of USAID funds from other direct grantees of USAID.

13. DKT International's office in Vietnam has been implementing the "100% Condom Access" project, with USAID funds under the IMPACT project (Implementing AIDS Prevention and Care Project) since 1998. Another non-governmental agency, Family Health International, ("FHI") was the direct grantee from USAID. With USAID's permission, FHI gave USAID subgrants to DKT International. The IMPACT project involves targeted AIDS prevention social marketing activities in six of the most high-risk provinces in Vietnam. On July 1, 2003, DKT International was awarded another Cooperative Agreement (#IMPACT HRN-A-00-97-00017-00), a \$499,225 two-year grant to continue its work under the IMPACT program

14. On June 27, 2005, FHI notified DKT International's Vietnam Country Representative that FHI had received permission from USAID to fund a condom-lubricant proposal DKT International had submitted to FHI and USAID several months earlier. On June 28, 2005, FHI further informed DKT International that it would provide DKT with \$60,000 in USAID funds to undertake that proposal.

15. On June 27, 2005, the DKT International Country Representative in Vietnam also received from the FHI Vietnam Country Director in Hanoi an already executed no-cost, two-

month extension to the existing IMPACT funding agreement. The extension amendment, signed by the FHI Country Director, allowed DKT International to continue using unspent grant funds for two months beyond the original authorized period of performance, which ended on June 30, 2005. As of July 7, 2005, approximately \$57,000 of the original grant remained unspent.

16. The extension amendment included a set of attachments. The DKT International Country Representative signed the agreement, but immediately voided his signature when he discovered that FHI and USAID required him to certify that “DKT International hereby certifies that it has a policy explicitly opposing prostitution and sex trafficking.” The amendment further provided, “This certification is an express term and condition of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by FHI or USAID prior to the end of its term.”

17. USAID’s Acquisition and Assistance Policy Directive (AAPD) 05-04 required FHI to require its subgrantee, DKT International, to certify that it has a policy opposing prostitution.

DKT International’s Refusal to Sign the Certification

18. The DKT International Country Representative refused to sign the certification that accompanied the no-cost extension documents and promptly requested a waiver.

19. On July 5, 2005, the DKT International Country Representative received a denial of that request. The FHI Country Director stated:

I have confirmed that FHI will not be able to execute the no-cost extension unless DKT is able to sign the anti-prostitution statement. Furthermore, we would not be able to support DKT for any activities with USAID funds if this is not signed. Please discuss with DKT management if there is any flexibility on this and let me know.

20. On July 13, 2005, FHI reversed itself on the no-cost extension issue. It notified DKT that the no-cost extension amendment could go forward without the certification because “the funds for DKT’s sub-agreement with FHI originated prior to the application of the USAID guidance on anti-prostitution.”

21. The refusal to provide new USAID funding, however, remained firmly in place. FHI cancelled the earlier-promised \$60,000 USAID grant for packaging of lubricants and condoms in Vietnam because DKT refused to sign the USAID-required certification. The FHI Country Director informed DKT that “it will not be possible for FHI to fund DKT to carry out this work.” FHI then referred to the required certifications, and noted, “You have indicated that DKT declines to sign the certification form provided to you to [with those certifications]. The FHI policy and certification requirement is in compliance with FHI’s Agreement with USAID, including USAID Acquisition and Assistance Policy Directive 05-04 issued June 9, 2005. Thus, FHI is unable to provide additional funding to DKT.”

22. In addition, USAID representative Dan Levitt told DKT’s Vietnam Country Representative that DKT would be ineligible for USAID funding unless it certified that it had a policy explicitly opposing prostitution.

The Impact of the Certification Requirement on DKT International

23. DKT has no policy on prostitution and does not wish to adopt one. It believes it has a First Amendment right not to do so. In addition, as an organization working to prevent the spread of HIV/AIDS, it strongly believes it can best do that in the many countries in which it works by maintaining neutrality on the controversial question of how to handle the complex problems that arise at the intersection of the HIV/AIDS epidemic and prostitution.

24. In addition, if DKT were to adopt the government-prescribed policy to be eligible to receive USAID funding, the policy would then require it to restrict its own speech, outside of its work with USAID funds, to speech consistent with that policy. Thus, the USAID-required policy would restrict even speech and activities paid for with private and non-U.S.-government funds.

25. As a result of the statute and the USAID requirement, DKT has been penalized for exercising its First Amendment right not to speak by losing the already-agreed-upon USAID funding of \$60,000 for the condom-lubricant proposal in Vietnam.

26. As a result of the statute and the USAID requirement, DKT has also been penalized for exercising its First Amendment right not to speak by being excluded from eligibility for all future USAID grant funds. DKT International has previously been eligible to receive USAID funds, and has received them. Indeed, USAID funding represents approximately 16% of DKT International's funding worldwide. DKT International intends to continue to provide HIV/AIDS prevention programming of the sort that has been eligible for USAID funding and is ready, willing, and able to apply for such funding, for which it would be eligible if not for USAID's certification requirement.

27. In addition, the statute and regulation, which condition eligibility for USAID grants on adopting a policy “explicitly opposing prostitution,” are vague because DKT cannot reasonably predict whether its other speech and activities (funded by private donors and other governments) might be deemed by USAID to insufficiently oppose prostitution. And the consequences for predicting wrongly are potentially significant: organizations who are found to have violated their agreements by not having an adequate policy (or not adhering to it) may be required to repay in full an already-spent grant. Further consequences, such as debarment or false claims actions are also not beyond the realm of possibility.

28. The statutory and regulatory provisions requiring that DKT not use USAID funds to “promote the . . . practice of prostitution,” 22 U.S.C. § 7631(e), and USAID AAPD 05-04 are also unconstitutionally vague because DKT cannot predict how USAID will interpret that phrase. Especially in the context of HIV/AIDS services provided to sex workers, virtually any assistance provided to a sex worker might be construed to “promote” the sex worker’s “practice.” And while some activities have been excluded by the statute, such as “palliative care, treatment, post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides,” 22 U.S.C. § 7631(e), reasonable people could easily disagree on whether a range of other activities would promote the practice of prostitution. Given the significant penalties that accompany guessing wrong on how USAID will construe the language, the statute and regulation will unconstitutionally chill protected speech.

29. Because DKT International receives funds from multiple donors around the world, the adoption of the U.S.-government compelled organization-wide policy opposing prostitution is not limited to programs implemented with U.S. government funds. Instead, the compelled adoption of such a policy would restrict DKT International's ability to carry out programs funded entirely by non-U.S. government donors, including private, governmental, and international organizations.

CAUSES OF ACTION

COUNT I

30. Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1-29 above.

31. The Act and USAID violate the First Amendment to the United States Constitution because they condition eligibility for USAID funding for U.S. organizations on expressly adopting the U.S. government's political viewpoint on prostitution.

32. The Act and USAID regulations compel speech in violation of the First Amendment of the United States Constitution and in violation of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq..

COUNT II

33. Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1-32 above.

34. The Act and the USAID regulations restrict and burden constitutionally-protected expression of U.S. organizations that is supported exclusively by private, international, or other

donor funds in violation of the First Amendment of the United States Constitution and the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq.

COUNT III

35. Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1-34 above.

36. The Act and USAID regulations are unconstitutionally vague, in violation of the First Amendment of the United States Constitution and the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq.


RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully requests that this Court:

- A) Declare that 22 U.S.C.A. §§ 7631(e) and (f) of the Global AIDS Act are unconstitutional to the extent they require U.S. organizations to have a policy explicitly opposing prostitution;
- B) Declare that the USAID Implementing Regulations, codified at AAPD 05-04 are unconstitutional to the extent that they requires U.S. organizations to have a policy explicitly opposing prostitution;
- C) Permanently enjoin defendants from enforcing those provisions;
- D) Order USAID to instruct Family Health International that USAID authorizes FHI to disburse the \$60,000 grant for the Vietnam condom-lubricant proposal;
- E) Award Plaintiff such costs and fees as are allowed by law; and

F) Grant Plaintiff such other and further relief as this Court deems equitable,
just, and proper.

Respectfully submitted,
DKT INTERNATIONAL, INC.

By 
One of Plaintiff's Attorneys

Julie M. Carpenter
D.C. Bar No. 418768
Martina E. Vandenberg
D.C. Bar No. 476685
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601 13th Street, N.W.
Washington, DC 20005
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Rebekah Diller*
Laura K. Abel*
Brennan Center for Justice at NYU School of Law
161 Ave. of the Americas
12th Floor
New York, NY 10013

* Not admitted in the District of Columbia

CERTIFICATE OF SERVICE

The undersigned certifies that on the 11 day of August 2005, a true and correct copy of the foregoing document was delivered via hand delivery to:

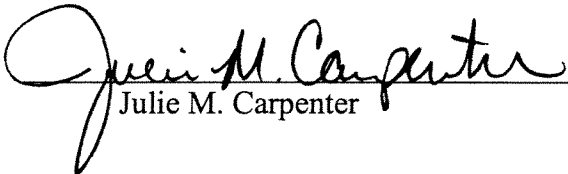
Daniel Van Horn
Office of the United States Attorney, Civil Division
501 3rd Street, NW
Washington, DC 20001

and by certified mail to:

Andrew S. Natsios
Administrator
U.S. Agency for International Development
1300 Pennsylvania Ave, NW
Room 6.09
Washington, DC 20523

John S. Gardner
Office of General Counsel
U.S. Agency for International Development
1300 Pennsylvania Ave, NW
Room 6.06
Washington, DC 20523

The Hon. Alberto R. Gonzales
Attorney General of the United States
Department of Justice
Room 4400
950 Pennsylvania Ave, NW
Washington, DC 20530-0001


Julie M. Carpenter



USAID
FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: June 9, 2005

AAPD 05-04

Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

Subject Category: ACQUISITION MANAGEMENT, ASSISTANCE

Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: ☐ Is New ☒ Replaces/ ☐ Amends CIB/AAPD No: 04-04 (Revision 2)

Applicable to:

- ☒ Existing awards; ☐ Modification required
- ☐ No later than
- ☒ As noted in guidance below
- ☒ RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC
- ☐ Other or N/A

Precedes change to:

- ☒ AIDAR Part(s) tbd Appendix
- ☒ USAID Automated Directives System (ADS) Chapter 302, 303, and 308
- ☒ Code of Federal Regulations 22 CFR 226
- ☐ Other
- ☐ No change to regulations

☒ New Provision/Clause Provided Herein: If checked, scheduled update to Prodoc: Dec. 2005

(signed copy on file)

Jeffery Bell
Acting Director

1. PURPOSE:

The purpose of this AAPD is to provide clauses to be included as new standard provisions for assistance agreements and contracts that include HIV/AIDS funds. These provisions: (i) permit recipients to not endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to not endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection; (ii) prohibit the funds provided under the agreement to be used to promote the legalization or practice of prostitution or sex trafficking; and (iii) require recipients to agree that they oppose prostitution and sex trafficking.

2. BACKGROUND:

The United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, Pub.L. No. 108-25 (2003) (the "AIDS Authorization") authorizes funds to be appropriated for HIV/AIDS activities for the fiscal years 2004-2008. The AIDS Authorization includes, among other things, certain restrictions on the use of HIV/AIDS funds, and requires recipients of those funds to have certain policies in place. It also permits an organization to receive funds even if such organization cannot endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

Section 301 of the AIDS Authorization, entitled "Assistance to Combat HIV/AIDS," includes the following provisions:

"(d) ELIGIBILITY FOR ASSISTANCE- An organization that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961 (as added by subsection (a)) or under any other provision of this Act (or any amendment made by this Act) to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

(e) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides.

(f) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."

The Consolidated Appropriations Act of 2004 and 2005, Division D – Foreign Operations, Export Financing, and Related Programs Appropriations (“FY 04 and FY 05 Appropriations Acts”), Title II – Bilateral Economic Assistance, United States Agency for International Development, Child Survival and Health Programs Fund include the following provision, “That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.”

In addition, the FY 04 Appropriations Act amended section 301(f) of the AIDS Authorization by exempting the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any “United Nations agency” from that section. The Statement of Managers of the FY 04 Appropriations Act states that the conferees “intend that for purposes of this provision, the World Health Organization includes its six regional offices: The Americas (PAHO); South-East Asia (SEARO); Africa (AFRO); Eastern Mediterranean (EMRO); Europe (EURO); and Western Pacific (WPRO).”

Although the above-named public international organizations are exempt from section 301(f) of the AIDS Authorization, they are subject to the AAPD 05-04 clauses that implement sections 301(d) and (e) of the AIDS Authorization. However, this AAPD does not apply to USAID contributions to multidonor trust funds, such as to the Trust Fund for the Global Fund to Fight AIDS, Tuberculosis and Malaria.

Consistent with guidance from the U.S. Department of Justice, the AAPD 05-04 clauses that implement section 301(f) of the AIDS Authorization now apply to U.S. organizations as well as foreign organizations.

Prior to receiving HIV/AIDS funds under a grant or cooperative agreement, U.S. and non-U.S. non-governmental organizations that are prime recipients must provide a certification that they are in compliance with the standard provisions “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking” that appear below. USAID intends to require prime contractors to provide a similar certification and is currently seeking the approval of the Federal Acquisition Regulation Council to do so. Pending such approval, USAID will not require contractors to provide a certification.

OMB has approved the Agency’s information collection request under the Paperwork Reduction Act, allowing USAID to implement the above stated requirements in conformity with the Paperwork Reduction Act. Therefore, USAID will require (i) U.S. and non-U.S. nongovernmental organizations, certain public international organizations and contractors and subcontractors to have a policy explicitly opposing prostitution and sex trafficking; (ii) U.S. and non-U.S. non-governmental organizations receiving HIV/AIDS funds under a grant or cooperative agreement to provide a certification that they are in compliance with the standard provisions “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking”

AAPD 05-04 Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

that appear below; and (iii) all recipients of HIV/AIDS fund to ensure that information provided about the use of condoms as part of projects funded from such monies shall be medically accurate and include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms." (OMB No.: 0412-0568)

3. GUIDANCE:

A. For Assistance Awards (grants and cooperative agreements) to U.S. non-governmental, non-U.S. non-governmental, and Public International Organizations (PIOs):

I. Eligibility

The following provisions must be included in each new Request for Applications (RFA) and Annual Program Statement (APS) utilizing HIV/AIDS funding. When designing a program for HIV/AIDS the SO Team or requiring office must be mindful of the first clause below. The evaluation criteria should not give any special advantage to an organization that endorses or utilizes a multisectoral approach (multisectoral in the legislation refers to Abstinence, Be Faithful/Behavior Change, and Condoms).

These provisions also must be included in the Standard Provisions of any new grant or cooperative agreement to a public international organization or a U.S. or non-U.S. non-governmental organization financed with FY04-FY08 HIV/AIDS funds or modification to an existing grant or cooperative agreement that adds FY04-FY08 HIV/AIDS funds.

"ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (ASSISTANCE) (JUNE 2005)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

CONDOMS (ASSISTANCE) (JUNE 2005)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms. This fact sheet may be accessed at:

http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html

II. Limitation on the Use of Funds

The following must be included in the Standard Provisions of any grant or cooperative agreement or subagreement funded with FY04-FY08 HIV/AIDS funds with a U.S. nongovernmental organization, non-U.S., non-governmental organization or public international organizations.

**"PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE
LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING
(ASSISTANCE) (JUNE 2005)**

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(b) Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a non-governmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

(c) The following definition applies for purposes of this provision:

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

(d) The recipient shall insert this provision, which is a standard provision, in all subagreements.

(e) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

(End of Provision)"

III. Certification

This certification requirement only applies to the prime recipient. Before a U.S. or non-U.S. non-governmental organization receives FY04-FY08 HIV/AIDS funds under a grant or cooperative agreement, such recipient must provide to the Agreement Officer a certification substantially as follows:

“[Recipient's name] certifies compliance as applicable with the standard provisions entitled “Condoms” and “Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking” included in the referenced agreement.”

B. For Contracts:

I. Eligibility

The following provisions must be included in each new solicitation and contract utilizing FY04-FY08 HIV/AIDS funding. When designing a program for HIV/AIDS the SO Team or requiring office must be mindful of the first clause below. The evaluation criteria should not give any special advantage to an organization that endorses or utilizes a multisectoral approach (multisectoral in the legislation refers to Abstinence, Be Faithful/Behavior Change, and Condoms).

In addition, these provisions are to be included when any existing contract is amended to add FY04-FY08 HIV/AIDS funding.

“ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (ACQUISITION) (JUNE 2005)

An organization that is otherwise eligible to receive funds under this contract to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

CONDOMS (ACQUISITION) (JUNE 2005)

Information provided about the use of condoms as part of projects or activities that are funded under this contract shall be medically accurate and shall include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, “USAID: HIV/STI Prevention and Condoms. This fact sheet may be accessed at:

http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html

II. Limitation on the Use of Funds

The following must be included in the Schedule of any contract that includes FY04-FY08 HIV/AIDS funds.

**"PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE
LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING
(ACQUISITION) (JUNE 2005)**

(a) This contract is authorized under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (P.L. 108-25). This Act enunciates that the U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. The contractor shall not use any of the funds made available under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(b) Except as provided in the second sentence of this paragraph, as a condition of entering into this contract or subcontract, a non-governmental organization or public international organization contractor/subcontractor must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

(c) The following definition applies for purposes of this provision:

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

(d) The contractor shall insert this clause in all subcontracts.

(e) Any violation of this clause will result in the immediate termination of this contract by USAID."

If the contract provides for the contractor to execute grants to non-governmental organizations (not-for-profits or for-profits), per ADS 302.5.6 Grants under Contracts, then the contractor must comply with the assistance provisions in Section 3.A of this AAPD when awarding grants or cooperative agreements under its contract (in compliance with ADS 302.5.6(c) and (d)).

4. POINTS OF CONTACT:

USAID Contracting Officers and Agreement Officers may direct their questions about this AAPD to Diane M. Howard, M/OAA/PE, Phone: (202) 712-0206 e-mail: dhoward@usaid.gov, or Ann Cataldo, M/OAA/PE, Phone (202) 712-4886, e-mail acataldo@usaid.gov.

Contractors, recipients, and prospective offerors for contracts or assistance awards must direct their questions to the cognizant Contracting Officer or Agreement Officer for the award.

All other inquiries about this AAPD may be addressed to Diane Bui, GC/GH & EGAT, Phone (202) 712-0529 e-mail: dibui@usaid.gov.