

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

OFFICE: 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: Maggie Wynne, Office of Global Health Affairs, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Room 639H, Washington, D.C. 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 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 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 an organization if:

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

(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. 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;

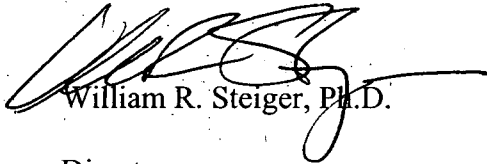
(iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;

(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, conferences and press or public statements.

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

Dated: *July 23, 2007*



William R. Steiger, Ph.D.

Director