



RSC Policy Brief: President's Emergency Plan for AIDS Relief (PEPFAR)

*UPDATED: February 26, 2008
(to reflect the most recent version of the draft)*

The PEPFAR reauthorization legislation will be marked up on Wednesday, February 27th, 2008 in the House Committee on Foreign Affairs. The current draft text for Chairman Berman's bill raises some serious concerns from both a fiscal perspective and a pro-life and values perspective. This policy brief summarizes the most critical issues that this reauthorization raises.

Background: In May 2001, President Bush made the first of numerous pledges to give \$200 million to a new, yet-to-be-named global fund to fight AIDS. The Global Fund, an organization created out of the negotiations with several U.S. officials, began operation in January 2002. Initially, the efforts of the Global Fund were directed toward containing the spread of HIV/AIDS, but soon expanded to include the spread of tuberculosis and malaria. The President debuted the President's Emergency Plan for AIDS Relief (PEPFAR) in his January 2003 State of the Union Address. Since the mid-1980s, the U.S. Agency for International Development (USAID) has been implementing bilateral international AIDS projects, and PEPFAR has become an additional program for such support. It was authorized in May 2003 by P.L. 108-25, which combined both USAID and PEPFAR under the heading of a Global AIDS Coordinator at the Department of State.

According to [CRS](#), "The PEPFAR initiative promised substantial new resources for fighting AIDS, including \$9 billion over five years to be committed in 14 (later expanded to 15) of the most afflicted countries of the world. This new funding is being channeled through the Global HIV/AIDS Initiative (GHAI), directed by the Office of the Global AIDS Coordinator (OGAC). PEPFAR also promised \$5 billion over five years for ongoing bilateral AIDS programs in 105 other countries, as well as \$1 billion in contributions to the Global Fund. Officials said that overall, PEPFAR represented \$10 billion in "new money"—that is, \$10 billion in additional funds beyond spending that would have occurred if existing programs had simply been continued at then-current spending levels."

Funding: In 2003, PEPFAR was authorized at \$15 billion over 5 years. Since then, PEPFAR has received \$18.3 billion in appropriations over the past five fiscal years. The President's FY 2009 budget requested that funding for PEPFAR be doubled to \$30 billion. Chairman Berman's draft legislation provides an authorization level of \$50 billion. Both authorization amounts—\$30 billion or \$50 billion—raise serious concerns among conservatives. Such an expansive increase in a program that has little if any accountability and transparency measures may be opposed by many conservatives. In addition, some African non-governmental organizations (NGOs) have actually

asked that the U.S. not grant such a large increase in funding because of capacity issues—some organizations do not have the infrastructure to support such funding, meaning that much of the funding could be misspent. It will be critical to ensure that what resources are provided through PEPFAR are spent on evidence-based programs that have proven to be successful and that respect the pro-family and pro-life cultures of the countries in which they are implemented.

In addition to those arguments, the U.S. already provides roughly \$400 million a year for foreign NGO family planning activities. This proposed legislation would effectively open up a \$10 billion pot of funds for such activities.

Pro-Life/Values Concerns: There are numerous critical pro-life/values issues to be addressed in Chairman Berman’s draft reauthorization.

Family Planning Integration: The Berman draft language creates a family planning mandate, requiring the integration of “family planning” into nearly every aspect of the program. These efforts to integrate controversial abortion-related services into a bipartisan and consensus program would undermine the integrity of the program and could also adversely affect faith-based groups. Some may view this as an attempt to tap into PEPFAR’s resources in order to subsidize family planning and reproductive health initiatives.

In addition to these concerns, there is also the argument that allowing monies intended to address the HIV/AIDS pandemic to be diverted to other health concerns may ultimately dilute the effectiveness of PEPFAR in addressing HIV/AIDS.

Furthermore, PEPFAR currently contains a “conscience clause,” which states that an organization cannot be required to promote a prevention method or treatment program to which the group has a religious or moral objection. Incorporating “family planning” may render this clause meaningless if faith-based organizations are required to support such activities in order to receive PEPFAR funds. This change is particularly problematic in the context of HIV programming, which in many areas in Africa is provided mostly by faith-based organizations.

Defiance of the Mexico City Policy through PEPFAR: The annual State-Foreign Operations appropriations bill includes a restriction that funds cannot be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions (known as the Helms Amendment). This restriction applies to PEPFAR bilateral funding, so any grants issued pursuant to PEPFAR cannot be used directly for abortion. However, under this proposed legislation, international groups that perform and/or promote abortion will now be able to obtain PEPFAR monies for HIV/AIDS programs and thereby supplement and expand their abortion activities because PEPFAR is not covered by the Mexico City Policy.

In 2001, President Bush reinstated an administrative policy, known as the Mexico City Policy (MCP), which prohibits US funding from going to any foreign nongovernmental organizations that performs and/or promotes abortion. In 2003, the President issued a memorandum stating, without explanation, that the MCP does not apply to PEPFAR. According to the Administration, this was to ensure that money was rolled out effectively and efficiently to organizations that were already in the best position to begin the effort. Effectively, the lack of this policy over PEPFAR funds has enabled a foreign organization that performs and/or promotes abortion (who would not be able to receive family planning assistance normally under the MCP) to receive PEPFAR money for

HIV/AIDS programs. Under current law, an abortion performer and/or promoter (family planning organization) can receive PEPFAR funds for its HIV/AIDS services, so long as it pays for the family planning services that it offers with non-U.S. funding.

As the PEPFAR program as matured since its inception, it may no longer be necessary to withhold the MCP from PEPFAR funding. There are numerous organizations in existence that would benefit from PEPFAR funding for HIV/AIDS programs—organizations that do not perform and/or promote abortion. Many of these organizations may not have existed prior to PEPFAR, but have developed since U.S. aid to Africa has increased. As is the argument with the Title X program funding pro-abortion organizations such as Planned Parenthood, money is fungible, and funds given to organizations who perform and/or promote abortion (while not being used directly for such abortions) will effectively open up funding for a pro-abortion agenda.

In addition, the Berman bill contains numerous provisions to address the need for an improved health care and workforce infrastructure in Africa. According to the Republican Committee staff, African health systems are in dire need of repair, support, and training, not only to address the HIV/AIDS pandemic, but also the numerous other health needs of Africans. If U.S. dollars fund pro-abortion organizations, it is possible that they will use such funding to become a part of any re-building effort, effectively inserting their pro-abortion agenda into the re-building of the health care system in Africa.

In light of these concerns, it is important to keep in mind that Chairman Berman's proposed increase in funding would translate into \$10 billion a year that will be prioritized toward abortion performers and/or promoters.

Abstinence and Be Faithful Spending Requirement: Known as the “abstinence earmark” by those who oppose it, this funding requirement ensures that at least 33% of PEPFAR prevention funds are spent on abstinence and “be faithful” programs—programs which have proven to be effective within affected African populations. The Democrats have removed any spending requirement in their draft proposal.

Currently, at least 33% of PEPFAR prevention funds must be used toward implementing abstinence and “be faithful” programs. These two methods, along with the providing of condoms (when an individual refuses to abstain or be faithful), referred to as the ABC approach, has proven to be very successful in reducing the prevalence of HIV rates in those Africa countries who have implemented such programs (such as Uganda). Prevention strategies that emphasize condoms have proven to be ineffective in lowering the number of HIV infections in generalized epidemics (where the infection is spread throughout the generalized population—as opposed to within certain target groups), and in some cases, the HIV prevalence rate has actually increased. It is important to note that abstinence programs in Africa do not operate like domestic abstinence programs do. Abstinence programs in Africa revolve around educating and empowering young women about their options and how they can, and should, stay in school to prevent a less desirable future (contracting HIV/AIDS, etc.).

According to the Republican Committee staff,

“Prior to PEPFAR, the U.S. Government and other Western donors only supported condom prevention programs, even in generalized epidemics. Faith-based organizations, including both large organizations such as Catholic Relief Services and small organizations

working within local communities, assert that before 2004 it was impossible for them to obtain U.S. funding for prevention programs that focused on abstinence and be faithful behavioral change. Representatives of the U.S. Agency for International Development working in the field admit privately that they laughed at the thought of funding abstinence programs. African government officials and NGO representatives have commented on how grateful they were when PEPFAR finally provided resources for prevention strategies that focus on the ABC approach which originated in Uganda and that respects their local moral values and indigenous cultures.

“Despite the evidence that shows the success of the ABC approach, PEPFAR still is the only major donor that designates funding for abstinence and ‘be faithful’ programs. (And even with the spending requirement, the United States is the single largest donor of condoms in the world.) UNAIDS even refused to publish the results of a study by Dr. Norman Hearst that UNAIDS commissioned when the study failed to support UNAIDS’ thesis that condom promotion was reducing HIV prevalence in Africa. Dr. Hearst, in his recent testimony before the House Committee on Foreign Affairs,¹ explained why it is proving difficult to build upon the success of the AB behavioral change programming:

... [funders] often officially endorse ABC but in practice continue to put their money into the same old strategies that have been so unsuccessful in Africa for the past 15 years: condoms, HIV testing, and treating other sexually transmitted infections.

“One might ask why they continue to do this despite all the evidence. It’s difficult to convey the tremendous inertia for doing the same old things. First, they’re relatively easy to do. Second, many of the implementing organizations and individuals have backgrounds in family planning. They’re good at distributing condoms and providing clinical services but may have no idea how to get people to change sexual behavior. Third, decisions are often made by expatriates and westernized locals trained in rich countries who have internalized prevention models from concentrated epidemics. Finally, if you try to do everything, expensive clinical services quickly eat up budgets, leaving little for the critical A and B of ABC.”

The concern is that the Berman bill would effectively eliminate any abstinence and “be faithful” aspects of the evidence-based ABC approach. Dr. Hearst, again in his testimony before the House Committee on Foreign Affairs, convincingly argued against such a dilution:

“Let me close with a warning regarding talk about ‘ABC plus’ or ‘moving beyond ABC’ and diverting AIDS prevention funding to whatever other good cause people are promoting. Always ask, ‘Where is the evidence?’ For example, I’m all in favor of poverty alleviation. But in most countries with generalized epidemics, the rich have higher HIV infection rates than the poor. Similarly, for gender equity, many of the African countries with the best records in this regard (like Botswana) have the highest rates of HIV infection. Anything that dilutes the focus of AIDS prevention in Africa from changing sexual behavior may do more harm than good.”

Many are legitimately concerned that if the 33% funding requirement for AB is removed, many of the prevention funds will be used for the distribution of condoms and other less successful (but

¹ Testimony of Dr. Norman Hearst, MD, MPH, Hearing on “PEPFAR Reauthorization: From Emergency to Sustainability,” House Committee on Foreign Affairs, September 25, 2007.

arguably easier) programs that large organizations would prefer to focus on. Loss of the AB programs could cause the significant reductions in HIV prevalence rates to be a thing of the past.

Prostitution Pledge: The proposed reauthorization would remove the current legislative requirement that no HIV/AIDS funding may go to a group that does not explicitly oppose prostitution and sex trafficking. The U.S. Agency for International Development has implemented this prohibition by requiring any group that receives funding to sign a pledge affirming its opposition to prostitution and sex trafficking (known as the Prostitution Pledge). Removing this requirement would undermine its purpose, which is to ensure that U.S.-funded groups support the government's message to reduce behavioral risks which are associated with such activities as prostitution and sex trafficking.

According to Republican Committee staff,

“The pledge has been the subject of two court challenges. One case in New York is still being litigated. The other case was brought by DKT International in the D.C. federal courts on the basis that the pledge violated the organization's first amendment right to free speech. In its February 2007 decision, the Court of Appeals noted that the government's objective in the legislation is to eradicate HIV/AIDS, and the strategy to achieve this objective includes fostering behavioral change that has proven successful in Uganda. The Court agreed with the government's assertion that:

It would make little sense for the government to provide billions of dollars to encourage reduction of HIV/AIDS behavioral risks, including prostitution and sex trafficking, and yet to engage as partners in this effort organizations that are neutral toward or even actively promote the same practices sought to be eradicated. The effectiveness of the government's viewpoint-based program would be substantially undermined, and the government's message confused, if the organizations hired to implement that program by providing HIV/AIDS programs and services to the public could advance an opposite viewpoint in their privately-funded operations.

“Contrary to assertions made by those who oppose the pledge, neither the statutory language nor the pledge prevents funded organizations from working with prostitutes. The guidance issued by the State Department Office of the Global AIDS Coordinator explicitly recognizes and directs that appropriate services be provided to prostitutes, aka ‘sex workers,’ and other ‘high-risk groups.’

Following the ABC model, and recognizing that correct and consistent condom use is an essential means of reducing, but not eliminating, the risk of HIV infection for populations who engage in risky behavior, the Emergency Plan will fund those activities that target at-risk populations with specific outreach, services, comprehensive prevention messages, and condom information and provision. As defined above, these populations include sex workers and their clients, sexually active discordant couples or couples with unknown HIV status, substance abusers, mobile male populations, men who have sex with men, people living with HIV/AIDS, and those who have sex with an HIV-positive partner or one whose status is unknown.

“Those who are advocating for the removal argue in vague terms that it hampers their ability to work with prostitutes and creates a stigma. Although they concede that prostitution is not the ‘best’ option for women, they want to have the ability to support it as an option. PATH, an NGO which currently receives PEPFAR funding, criticizes the prostitution pledge on the basis that it undermines the promotion of sex workers rights, especially their rights as workers.”²

These organizations want to be able to support prostitution and sex trafficking as a viable work option for women, and still receive PEPFAR funding for their work to promote healthy lifestyles to avoid the spread of HIV/AIDS. Other groups, particularly faith-based groups, have accepted the pledge requirement and indicate that they are working with prostitutes and other high-risk groups without difficulty. Faith-based groups also point out the severe exploitation, health risks, and even violence to which prostitutes are subjected, and emphasize the importance of providing alternative income-generating options for these women.

Global Fund to Fight AIDS, Tuberculosis (TB) and Malaria: The Global Fund was created in 2002 as an international funding instrument that could consolidate donations from government and private sources to address the AIDS pandemic, tuberculosis and malaria on a global scale. Primary recipients of Global Fund grants are largely government entities, which then channel the money through numerous “sub-recipients.” According to the Global Fund’s website, “as a partnership between governments, civil society, the private sector and affected communities, the Global Fund represents an innovative approach to international health financing.”³

The 2003 PEPFAR legislation authorized a contribution to the Global Fund of up to \$1 billion for FY 2004 and “such sums as may be necessary” for fiscal years 2005 through 2008. Over \$3 billion has been appropriated to the Global Fund over the past five years, including \$840 million for FY 2008 (including the rescission). The proposed reauthorization would provide an authorization of up to \$2 billion for FY 2008 and FY 2009, and “such sums” for the remaining three years.

Currently, the U.S. provides one-third of all Global Fund money—although the program is designed to be a “partnership between governments.” While an important aspect of the global strategy to fight HIV/AIDS, TB and malaria, the Fund does not provide any information about its grant recipients or their activities, and is lacking in basic oversight and monitoring. Nor is the Global Fund covered by **any** pro-life policy (such as the Mexico City Policy, or the Kemp-Kasten Amendment, which prohibits funding of any organization that either supports or participates in the management of a program of coercive abortion or involuntary sterilization). There is documentation proving that the Global Fund may be granting money to organizations such as Marie Stopes (the UK equivalent to Planned Parenthood), the United Nations Population Fund (which supports China’s “one-child” policy), as well as the Chinese Health Department itself (supporting the “one-child” policy). If this legislation is enacted, the proponents of the Chinese one-child policy will have successfully done an end run around Kemp-Kasten.

² “Convergence of HIV and SRH Services in India,” PATH, January 2007, p. 23.

³ The Global Fund To Fight Aids, Tuberculosis and Malaria, <http://www.theglobalfund.org/en/>

Unfortunately, due to the lack of accountability and transparency in the Global Fund, U.S. foreign aid dollars cannot be tracked through the program. This weakness is not addressed in the proposed reauthorization, and furthermore, the reauthorization proposes to increase the current ceiling of 33% U.S. contributions to the Global Fund. The purpose of this ceiling restriction was to ensure that the Global Fund pursue and live up to the purpose for which it was created—to attract donations on a global level (making it multilateral, involving other countries besides the U.S.). The proposed bill would alter the current funding restriction by allowing the President to suspend such a ceiling if “such suspension would further the purposes of this Act.” Many conservatives may be concerned that this would put all of the power of opening up large sums of money, to a program which is not accountable for such money, at the whim of the executive branch.

According to the Republican Committee staff,

“numerous concerns have arisen through media reports, congressional hearings, and other sources about the accountability and transparency of the Global Fund. In response to these concerns, the State and Foreign Operations appropriations bill (now included in the omnibus appropriations legislation) incorporated a provision that 20% of the US contribution to the Global Fund must be withheld unless the Secretary of State certifies that the Global Fund:

- is releasing monies only if recipients show that they are meeting pre-established goals;
- is providing support and oversight to enable grant recipients and other actors on the country level to fulfill their mandates;
- has a full-time, professional, independent Office of Inspector General that is fully operational, and is implementing a policy to publish the IG’s reports;
- requires Global Fund agents in-country to assess whether primary recipients have the capacity to oversee the activities of sub-recipients;
- is implementing a reporting system that provides programmatic activity information; and
- is tracking and encouraging the involvement of civil society, including faith-based organizations, in country-level mechanisms that ensure that civil society is able to receive and benefit from Global Fund resources.

The appropriation legislation also calls for a report on the involvement of faith-based organizations in Global Fund programs.”

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