



Application of the "Prostitution Loyalty Oath" in U.S. Global AIDS Policy

November 2005

- **May 27, 2003:** United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (AIDS Act) is signed into law. Included in this law are sections 301 (e) and (f), which prohibit the use of funds to promote or advocate the legalization or practice of prostitution or sex trafficking and prohibit funding to organizations that do not have a policy explicitly opposing prostitution and sex trafficking.
- **December 19, 2003:** Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) is signed into law. Included in this law are sections 113 (g) (1) and (2), which prohibit the use of State Department anti-trafficking funds to promote, support, or advocate the legalization or practice of prostitution and prohibit funding to any organization that has not stated, in a grant application or a grant agreement, that it does not promote, support, or advocate the legalization or practice of prostitution.¹
- **January 15, 2004:** Through a policy directive, USAID prohibits the use of Global AIDS funding to promote the legalization or practice of prostitution or sex trafficking and requires funding recipients to agree that they oppose prostitution and sex trafficking.²
- **January 23, 2004:** Consolidated Appropriations Bill, which provides funding for Global AIDS and anti-trafficking programs for FY2004, is signed into law. This law exempts from Global AIDS prostitution and trafficking funding restrictions the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization (WHO), International AIDS Vaccine Initiative, and any "United Nations agency."³
- **February 26, 2004:** U.S. Agency for International Development (USAID) publishes a revision to AAPD 04-04 that requires only foreign non-governmental organizations to have a policy explicitly opposing prostitution.⁴ The revised directive cites a Senate colloquy, which establishes that an organization can fulfill this provision by including a statement in a grant or contract between the U.S. Government and such organization, rather than by adopting an organization-wide policy.
- **July 16, 2004:** USAID publishes a second revision of the AAPD 04-04, which states that "[t]he U.S. Government has determined that it is appropriate to apply the requirement set forth in [AIDS Act] section 301(f) only to foreign organizations, including non-exempted public international organizations (PIOs)."⁵
- **September 20, 2004:** Withdrawing its earlier, "tentative" advice to the contrary, the U.S. Department of Justice advises that the U.S. Constitution allows funding restrictions in the Global AIDS Act to be applied to U.S. organizations.⁶
- **December 8, 2004:** Consolidated Appropriations Act for 2005 applies Global AIDS Act restrictions to all programs funded by the Departments of Commerce, Justice, and State for the fiscal year.⁷
- **May 5, 2005:** The Centers for Disease Control and Prevention publishes a Request for Applications (RFA) with a revision of AIDS funding restrictions, requiring all sub-recipient NGOs of the Global Fund, WHO, and UN agencies to have a policy opposing prostitution and sex trafficking.⁸

For the public health and human rights implications of these policies on effective HIV and anti-trafficking programs, see CHANGE's Policy Brief, *Implications of U.S. Policy Restrictions on Programs Aimed at Commercial Sex Workers and Victims of Trafficking Worldwide*, Nov 2005.

TIMELINE: Application of the “Prostitution Loyalty Oath” in U.S. Global AIDS Policy

- **May 18, 2005:** The *Washington Post* reports that, after public outcry, the Global AIDS Coordinator, Ambassador Randall Tobias, rescinded the CDC policy modification.⁹
- **June 9, 2005:** USAID policy directive AAPD 04-04 is replaced by AAPD 05-04, which requires, as a condition for receiving U.S. global AIDS funding, all foreign and U.S.-based non-governmental organizations to have a policy explicitly opposing prostitution and sex trafficking.¹⁰
- **August 9, 2005 and September 23, 2005:** Lawsuits challenging the constitutionality of the loyalty oath and its application to U.S.-based organizations were filed by two U.S. organizations whose global AIDS funding was subject to the oath. A hearing on the merits of the first suit will be on Nov. 21, 2005.
- **September 16, 2005:** Several U.S.-based PEPFAR funding recipients received a letter from Rep. Mark Souder (R-IN), of the House Government Reform Committee, requesting copies of those organizations' policies on prostitution and sex trafficking. Rep. Souder's office said that *any* organization working with prostitutes is suspected of violating the loyalty oath requirement. Rep. Souder's letter followed two letters to the State Department, sent Feb. 11, 2005 and July 15, 2005, demanding that the Secretary of State provide copies of all grant-recipient organizations' policies on prostitution and sex trafficking. Rep. Souder, in concert with Reps. Steve King (R-IA) and Chris Smith (R-NJ), also attempted to mandate such action by amending the draft Foreign Relations Reauthorization Act on July 20, 2005. (This bill is not likely to become law.)
- **Currently:** USAID has used several versions of the prostitution and sex trafficking language in different grant agreements requiring organizations to certify their opposition to sex trafficking and prostitution. USAID has also required varying versions of the STP certification in sub-grantee applications. In some instances, more restrictive language is applied to sub-grantee agreements under PEPFAR than is applied to grantees. The law is applied inconsistently. For example, in October 2005, USAID first included, and then deleted, the STP certification requirement in an agreement unrelated to HIV/AIDS or anti-trafficking activities.

¹ There is no mention of the loyalty oath in the original 2000 version of the Trafficking Victims Protection Act (TVPA) or in the 2005 reauthorization of this act. However, debate linking prostitution with sex trafficking occurred as early as July 27, 2000, with Senator Brownback urging passage of the TVPA to "address the growing ugly practice of sex trafficking where people are traded into human bondage -- again, in the sex and prostitution business around the world." However, the law did not reflect this linkage until 2003 with the passage of the Global AIDS Act.

² Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility for Assistance, Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking, AAPD 04-04, USAID (January 15, 2004), [Hhttp://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04_original.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04_original.pdf)H.

³ Consolidated Appropriations Act of 2004 HPL108-199H (2004), which amends 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 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)."

⁴ AAPD 04-04 (Revised), USAID (February 26, 2004), [Hhttp://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04_revision1.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04_revision1.pdf)H.

⁵ AAPD 04-04 (Revised), USAID (July 16, 2004), [Hhttp://www.usaid.gov/business/business_opportunities/cib/pdf/aapd4_04_Revision2.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd4_04_Revision2.pdf)H.

⁶ Letter from Daniel Levin, Acting Assistant Attorney General, U.S. Dep't of Justice, to Alex M. Azar II, General Counsel, U.S. Dep't of Health and Human Svcs. (Sept. 20, 2004).

⁷ Consolidated Appropriations Act, 2005 HPL108-447H(2004), Division B, Title VI, Sec. 639.

⁸ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, Increasing Access to HIV Counseling and Testing (VCT) and Enhancing HIV/AIDS Communications, Prevention, and Care in Botswana, Lesotho, South Africa, Swaziland, and Cote d'Ivoire, at Section IV.5, (stating, "[A]ny recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence... does apply to any non-governmental, non-exempt organization entity receiving U.S. government funds from an exempt organization..."), [Hhttp://www.cdc.gov/od/pgo/funding/AA006.htm](http://www.cdc.gov/od/pgo/funding/AA006.htm)H.

⁹ David Brown, "U.S. Backs Off Stipulation on AIDS Funds," *Washington Post*, May 18, 2005.

¹⁰ 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, AAPD 05-04, USAID (June 9, 2005), [Hhttp://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_04.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_04.pdf)H.