

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Shelli Peterson

Subseries:

OA/ID Number: 21947

FolderID:

Folder Title:

Mexico City Implementation WHO [White House Office] - Mar.95: Mexico City Lang. [Language]
Implementation 99-00 [3]

Stack:

S

Row:

115

Section:

4

Shelf:

9

Position:

2

January 2000

Guidance for FY 2000 Population Assistance Certification

Section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), requires that certain organizations (hereafter called "covered" organizations) certify they will not engage in specified abortion-related activities, using either USAID or non-USAID funds, during a specified period, in order to be eligible to receive FY 2000 population funds appropriated by PL 106-113 (hereafter "FY 2000 Population Funds"). Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the referenced law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form for purposes of receiving FY 2000 Population Funds. The form provides options for organizations to certify (Option No. 1) or decline to certify (Option No. 2). USAID requires prime awardees that expect to receive FY 2000 Population Funds, both U.S. and non-U.S., to identify their covered subawardees at all levels or "tiers" below the prime agreement and request certification forms from those covered organizations. With the information provided by the forms, USAID will determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap.

The present guidance is provided to assist intermediary organizations to implement the certification procedure with subawardees and assist covered organizations to complete the Certification Form.

1. Which organizations are "covered" by the certification procedure and will be asked to complete the Certification Form?

- ◆ Private, non-governmental entities, whether non-profit or profit-making, which are organized under the laws of a country other than the United States, and
- ◆ Multilateral (including global or regional) organizations which consist of member states,

that are scheduled to receive FY 2000 Population Funds, either directly from USAID through a prime contract, grant or cooperative agreement, or as subcontractors or subgrantees (hereafter "subawardees").

2. Which organizations are not "covered" by the certification procedure and will not be asked to complete the Certification Form?

Organizations not covered by the certification procedure include all U.S. government and U.S. private, non-governmental organizations and foreign governments. In addition, under the statute, organizations that receive only in-kind assistance (for example, in the form of technical assistance or commodities) are not covered. Also, commercial firms that are not engaged in family planning activities (for example, firms that supply goods and services of an administrative nature, such as suppliers of computer equipment, office supplies, maintenance or printing services) are not required to complete the certification form.

Organizations that will not receive FY 2000 funding are not requested to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

3. What is the meaning of the certification provision stating the organization "will not perform abortions..."?

The certifying organization certifies that it will not perform abortions in any foreign country (that is, in any country outside the U.S.), except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest. The certification restricts performance of abortion even in countries where abortion is permitted under local law. Provision, consistent with local law, of information or counseling about all pregnancy options is not restricted by the certification. The certification does not restrict organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any

foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited"?

The statutory language quoted here refers to activities or efforts by the organization which are intended to change the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited;
- Public outreach activities or efforts (for example, as

reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or

- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.

b. Also not covered are activities and efforts which lack an element of advocacy or are not otherwise intended to alter laws or policies, such as:

i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of existing abortion laws or policies;

ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and

iii) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

* iv) Sponsorship of a meeting where altering abortion laws or policies is not the purpose or focus, but where the subject arises incidentally; or

v) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities are not covered because, although they may involve advocacy, they do not involve altering laws or policies, for example, engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the circumstances under which abortion is permitted, regulated or prohibited, such as:

- i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

- ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort which may include an element of advocacy but which is of a *de minimis* (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort is not reasonably intended by the organization to alter laws and policies. Examples of such an activity or effort would include:

- i) An incidental statement in a publication, meeting, workshop or communication to the mass media which may advocate an alteration in abortion laws or policies but is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

- ii) The organization's membership in a network of organizations which may advocate altering abortion laws or policies, provided such membership does not involve active participation by the organization in such activities or efforts of the network; or

- iii) Any other individual activity or effort that in and of itself may contain an element of advocacy, but that is incidental, unintended, or *de minimis* in nature.

6. If an organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the Certification Form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if an organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is

capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

10. What if one or more subawardees of an intermediary organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.

**Request Letter for Non-U.S. Prime Awardee
for FY 2000 Population Assistance Certifications**

Dear (Name of Grantee/CA or Contract Representative):

A new U.S. law affecting FY 2000 population funds* requires non-U.S., non-governmental organizations (NGOs), private firms, and multilateral organizations (hereafter called "covered" organizations) to certify that they will not engage in specified abortion-related activities through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees, and to activities funded with either USAID or non-USAID funds. Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form, which gives covered organizations the option to certify or not certify. This Form and related guidance are attached.

USAID is considering your organization for direct support with FY 2000 population funds and has identified your organization as one covered by the certification procedure. In addition, we anticipate that your organization may provide such funds to other covered organizations through subagreements. We therefore request your assistance on three actions below:

- 1) We ask that you review the enclosed Certification Form and related Certification Guidance with respect to the activities of your own organization. The form provides options for organizations to certify (Option No. 1) or to decline to certify (Option No. 2). After

selecting one of the options and obtaining the signature of an authorized representative, please return the form to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000. If you select Option 2, or if you do not return the form, you will be considered as "non-certifying."

2) USAID must also ask your organization to identify covered subcontractor and subgrantee organizations (subawardees) that you expect to finance with FY 2000 population funds under your planned agreement with USAID. Such subawardees should be asked to complete the Certification Form, based on information contained in the Certification Guidance. Please forward the completed forms to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000. All forms should include at the top the appropriate contact names for your organization as the prime contractor/grantee.

3) For all covered subawardees that do not certify, provide the estimated level of USAID FY 2000 population funds that your organization expects to provide. If you are uncertain, indicate the likely minimum and maximum amounts. This information should be sent to your Cognizant Technical Officer (or other designated USAID mission officer) by March 24, 2000, for forwarding to USAID/Washington. Organizations that do not certify are only eligible for funding with prior approval from USAID/W.

USAID will use the forms and related financial information to determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap and at what levels. Receiving the requested information on time is essential to USAID's decision-making regarding allocation of the \$15 million. Although the time required for covered organizations to review the guidance and complete the form will vary, it is expected that most will require approximately four person-hours. The collection of forms from subawardees should take less than 40 hours on average.

Also, remember that funding for organizations that do not certify is firmly capped at \$15 million. If the demand for funds by organizations that do not certify exceeds the

\$15 million available, USAID will be required to reduce funding for some or all of these organizations. Organizations that do not certify should be made aware of the risk that their FY 2000 funding could be reduced. Organizations that do certify may receive FY 2000 funds without regard for the \$15 million cap.

Implementation of the new FY 2000 requirements will be monitored by USAID/Washington and the U.S. Congress. When you commit your USAID population funds, please track funding for your subgrantees and subcontractors carefully. Accurate accounting will be necessary to ensure that commitments of FY 2000 population funds can be identified and distinguished from prior year funds as well as from funds received from other USAID accounts or from non-USAID sources.

Please note that a new clause/provision will be added to all existing and new agreements and subagreements that commit FY 2000 population funds, describing awardees' obligations with respect to the certification procedures, filing requirements and remedies for non-compliance.

The text of this letter and enclosures may also be found on (websites -- USAID and/or John Snow Int'l.)

We very much appreciate your cooperation in helping us to comply with these new requirements. If you have questions concerning the letter or the enclosures, please contact: (the mission officer signing the letter, or other designated contact).

Sincerely,

(name of mission officer
responsible for PHN
activities)

Enc:

Guidance for FY 2000 Population Assistance Certification
FY 2000 Population Assistance Certification Form

*Section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, enacted in

P.L. 106-113

**Request Letter for U.S. Prime Awardee
(with non-U.S. Covered Subawardees)
for FY 2000 Population Assistance Certification**

Dear (Name of Grantee/CA or Contract Representative):

A new U.S. law affecting FY 2000 population funds* requires non-U.S., non-governmental organizations (NGOs), private firms, and multilateral organizations (hereafter called "covered" organizations) to certify that they will not engage in specified abortion-related activities during the period funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees, and to activities funded with either USAID or non-USAID funds. Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form, which gives covered organizations the option to certify or not certify. The Form and related guidance are attached.

USAID is considering your organization for direct support with FY 2000 population funds. As a U.S. entity, your organization is not covered by the certification procedure. However, we anticipate that your organization would provide FY 2000 population funds to covered non-U.S. organizations through subagreements under your planned agreement with USAID. To implement the certification procedure for covered organizations receiving FY 2000 USAID population funds as subawardees, we request your assistance on three actions below:

- 1) Please review the enclosed Certification Guidance and identify covered subawardee organizations that you expect to finance with FY 2000 population funds under your planned agreement with USAID.

2) Ask all covered subawardee organizations to review the enclosed Certification Guidance, complete the Certification Form, and provide it to you. We ask that you collect the requested certification forms as soon as possible. Note that all forms should include the appropriate contact names for your agency as the prime contractor/grantee. [For centrally-managed U.S. primes: Please retain original signed forms in your files and fax copies of all forms received to the following address, no later than March 24, 2000:

John Snow, Inc.
1616 North Fort Myer Drive, 11th Floor
Arlington, VA 22209
Attention: (name to be determined)
Tel: 703-528-7474
Fax: 703-528-74802)]

OR

[For mission-managed primes: Please forward the completed forms to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000.]

3) For all covered subawardees that do not certify, provide the estimated level of USAID FY 2000 population funding that your organization expects to provide. If you are uncertain, indicate the likely minimum and maximum amounts for FY 2000. [For centrally-managed U.S. primes: This information should be sent to your CTO by March 24, 2000, who will provide it to G/PHN/POP.]

OR [For mission-managed U.S. primes: This information should be sent to your CTO and provided to me (or other designated USAID mission contact) by March 24, 2000, for forwarding to USAID/Washington.] Organizations which select Option 2 on the Certification Form or which do not return the form are only eligible for funding with prior approval from USAID/W.

USAID will use the forms and related financial information to determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap and at what levels. Receiving the requested information on time is essential to USAID's decision-making regarding allocation of the \$15

million. Also remember that funding for organizations that do not certify is firmly capped at \$15 million. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funding for some or all of these organizations. Organizations that do not certify should be made aware of the risk that their FY 2000 funding could be reduced. Organizations that do certify may receive FY 2000 funds without regard for the \$15 million cap.

Although time required to collect certification forms will vary, most intermediaries are expected to require less than 20 person-hours of time to complete the collection process. John Snow, Inc. (JSI) will retain faxed copies of certification forms for your subawardees. To avoid requiring subawardees to sign multiple forms, JSI will also maintain a list of all certifying organizations for your future reference. Forms for non-certifying organizations will be forwarded immediately by JSI to USAID.

Implementation of the new FY 2000 requirements will be monitored by USAID/Washington and Congress. When you commit your USAID population funds, please track funding for your subgrantees and subcontractors carefully. Accurate accounting will be necessary to ensure that commitments of FY 2000 population funds can be identified and distinguished from prior year funds as well as from funds received from other USAID accounts or from non-USAID sources.

Organizations that will not receive FY 2000 funding are not requested to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, intermediary organizations are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

Please note that a new clause/provision will be added to all agreements and subagreements describing awardees' obligations with respect to the certification procedures for FY 2000 population funds and remedies for non-compliance.

The text of this letter and enclosures may also be found on (website -- USAID and/or John Snow International).

We very much appreciate your cooperation in helping us to comply with these new requirements. If you have

questions concerning the letter or the enclosures, please
contact : (names to be determined)

Sincerely,

(name to be determined, a
USAID/W official; or, in the
case of Mission-funded U.S.-
based primes, the mission
officer responsible for PHN
activities)

Enc:

Guidance for FY 2000 Population Assistance Certification
FY 2000 Population Assistance Certification Form

*Section 599D of the Foreign Operations, Export Financing,
and Related Programs Appropriations Act, 2000, enacted in
P.L. 106-113

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Rodney W. Johnson, Director

TO: Distribution List FAC

CONTRACT INFORMATION BULLETIN 00-

SUBJECT: Implementation of FY 2000 Population Certification Requirements

Section 599D of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), prohibits USAID from providing FY 2000 population funds appropriated under the statute (hereafter "FY 2000 Population Funds") to non-U.S., nongovernmental organizations, whether non-profit or profit-making, and multilateral organizations (hereafter called "covered" organizations), unless they certify that they will not engage in specified abortion-related activities during the period the funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 Population Funds either directly from USAID or as subcontractors or subgrantees, and to activities conducted by such organizations with either USAID or non-USAID funding. Although the President has exercised statutory authority to waive this requirement, only a limited amount of population funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify. Thus, when certifications cannot be obtained, USAID may provide funding to non-certifying, covered organizations only within the limited \$15 million cap. The certification requirement does not apply to U.S. primary awardees, other U.S. entities, foreign governments and certain others.

To implement the law, USAID is requesting all covered prime awardees to complete an FY 2000 Population Assistance Certification Form, prior to receiving FY 2000 Population Funds, which indicates whether the prime certifies or declines to certify. In addition, USAID will require all prime awardees receiving FY 2000 Population Funds, whether

Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations.

they are covered or not, to request certification forms from their covered subawardees at all levels below the prime award. USAID/G/PHN must specifically approve the funding levels of FY 2000 Population Funds for all non-certifying organizations. PHN staff in Washington and the field will be responsible for collecting certification forms from prime awardees, responding to questions from prime awardees to facilitate their collection of certification forms from their covered subawardees, and obtaining approvals of funding levels for non-certifying organizations from USAID/G/PHN.

Prior to making any award to a covered organization funded with FY 2000 Population Funds, COs and Grant/Agreement Officers must obtain written confirmation from the requesting office that a certification is on file or that, in the case of an organization that declines to certify, or does not complete the certification form, USAID/G/PHN has approved funding for the awardee under the \$15 million cap. In addition, Contract/Agreement Officers must include the appropriate clause/provision (attached) in all prime awards committing FY 2000 Population Funds. The clause for use in contracts is Attachment 1. The provision for grants and cooperative agreements is Attachment 2. The Certification Form and Certification Guidance (Attachments 3 and 4) must also be attached to the award document.

Attachment 1

Contract Clause to be included in Part H when FY 2000 population funding may be provided in the contract.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations ("covered" organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Contracting Officer.

(b) (1) Prior to the award of any sub-contract or grant to a covered organization that might include FY 2000 population funds, the Contractor must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Contracting Officer.

(2) If the subawardee returns the form, the Contractor must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Contractor may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Contractor may not make the subaward until it receives from the Director of USAID's Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Contractor must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its contract files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Contractor awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved

commitment of FY 2000 population funds under this contract in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Contractor may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This clause must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The clause need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.

Attachment 2

Provision for Grants and Cooperative Agreements to be included in the agreement when FY 2000 population funds may be provided.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations ("covered" organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Agreement Officer.

(b) (1) Prior to the award of any sub-contract, grant, or cooperative agreement to a covered organization that might include FY 2000 population funds, the Recipient must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Agreement Officer.

(2) If the subawardee returns the form, the Recipient must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Recipient may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Recipient may not make the subaward until it receives from the Director of USAID's Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Recipient must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its agreement files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Recipient awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved commitment of FY 2000 population funds under this Agreement in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Recipient may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This provision must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The provision need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.

USAID DRAFT DOCUMENT -- Internal Government Use Only -- January 18, 2000

12

which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

10. What if one or more subawardees of an intermediary organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the

USAID DRAFT DOCUMENT -- Internal Government Use Only -- January 18, 2000

13

activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.



POP Briefs

Mexico City "Gag Rule" Restricts Free Speech, Cuts Needed Family Planning Assistance for Women and Children

In July 1999, the House of Representatives adopted an amendment introduced by Rep. Chris Smith (R-NJ) to the Foreign Operations Appropriations bill. Smith's amendment, also known as the "Mexico City Gag Rule," would prohibit U.S. family planning assistance to foreign nongovernmental organizations (NGOs) or international organizations that -- *with their own funds* -- perform legal abortions or "engage in any activity or effort to alter laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited." The Senate version of the bill does not contain this amendment.

- These restrictions are unnecessary, since longstanding U.S. law prohibits the use of USAID funds for abortion as a method of family planning, or abortion-related lobbying.
- The Mexico City Gag Rule would cripple the work of many private organizations doing the most effective work in family planning and maternal and child health. The consequences would include an increased number of unintended pregnancies, unsafe abortions, and maternal and child deaths.

The current version of the Mexico City Gag Rule is more restrictive than ever:

- **Imposes sweeping restrictions on free speech.** Proponents of this amendment have supported a broad "lobby" ban that would penalize not only overt lobbying for changes in abortion laws, but also other activities such as sponsoring conferences and workshops "on the alleged defects in the abortion laws, as well as the drafting and distribution of materials or public statements calling attention to such alleged defects."
- **Unconstitutional if applied in the United States.** In the words of Secretary of State Madeleine Albright, the "lobby" ban "is basically a gag rule that would punish organizations for engaging in legal activities that would be protected by the First Amendment if carried out in the United States."
- **Contrary to basic principles of U.S. foreign policy.** The gag rule restrictions undermine U.S. credibility in our efforts to build democracies and encourage broad public access and participation in the political process, especially through NGOs.



Center for Population,
Health and Nutrition

U.S. Agency for
International Development

1300 Pennsylvania Ave., NW
Washington, DC
20523-6000

TEL: 202-743-0340
FAX: 202-746-3046

E-mail: phn@usaid.gov
Website: www.info.usaid.gov

© 2000 U.S. Agency for International Development

This Gag Rule is not a "compromise."

- The so-called "compromise" would allow the President to waive the ban on the performance of abortions, but should he do so, overall funding for family planning assistance would be cut from \$385 million to below \$356 million, taking it to its lowest level in eight years.
- This funding cut would further erode USAID's family planning program, which reaches an estimated 60 million families throughout the developing world, Eastern Europe and the former Soviet Union. The cut, on top of previous cuts, delays, and Congressionally imposed "metering" for the past four years, would further risk the health and well-being of women and children served by the program.
- The expanded "lobby" ban could not be waived. The threat of withholding federal funds would prevent NGOs from engaging in advocacy with their private funds, undermining free speech and the right to participate in the democratic process.

The Gag Rule's "lobby" ban could cause a foreign NGO to lose its U.S. family planning support if, with non-US funds:

- A physician at a private medical center in India advises the government on laws to make abortion safer, where abortion is legal.
- The head of an NGO delivers a speech either supporting or opposing laws affecting access to abortion.
- A women's health organization in Tanzania produces a report stating that a significant portion of maternal deaths are due to unsafe, illegal abortion, thereby calling attention to the "defects" in abortion laws.

The Gag Rule's "lobby" ban could also cause international organizations to risk losing U.S. family planning support if, with non-U.S. funds:

- An international agency such as the World Health Organization (WHO) sponsors a meeting of doctors and health experts to discuss medical regulations and other measures necessary to prevent deaths due to unsafe abortion. With U.S. support, WHO plays a leading role internationally in organizing and supporting contraceptive research and development.

Prepared July 1999



FACSIMILE TRANSMITTAL COVER SHEET

DATE: 1/20/00TO: Shelly PetersonTel:
Fax: 202-456-7024FROM: Barbara Crane
Senior Policy Adviser
Office of Population
Center for Population, Health and Nutrition
USAID
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20523-3600Tel: 202-712-5839
Fax: 202-216-3046
Email: bcrane@usaid.govNumber of pages (including cover sheet) 3Subject: Pop briefer

*I want to make sure you get both pages
of this one.*



U.S. Agency For International Development
Washington, D.C. 20523

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 1/20/00

TO: **Shelly Peterson, Office of the White House Counsel**

Tel:

Fax: 202-456-7024

FROM: **Barbara Crane**
Senior Policy Adviser
Office of Population
Center for Population, Health and Nutrition
USAID
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20523-3600

Tel: 202-712-5839

Fax: 202-216-3046

Email: bcrane@usaid.gov

Number of pages (including cover sheet) 5 6

Subject: Recent population briefers

Shelly,

I just spoke with Suzanne Palmieri. She suggested that I send over to you some briefers that we've done in the past. The two I am sending were prepared last summer.

There have also been a number of others on such topics as "family planning saves lives," "the unmet need for family planning," "raising the quality of family planning worldwide," "update on Cairo + 5", etc.

We have a diverse mailing list for these and use them when we are attending meetings or conferences, responding to requests for information, etc.

As an additional note, there are some events coming up very soon where the guidance you develop tomorrow will be important. One is a meeting the USAID Administrator will be having on Wed. January 26 with population cooperating agencies and advocacy groups (including family planning, women's and environmental groups) -- his first with these groups and a time when the new AA/LPA, Joe Crapa, and new Director of the Office of Population, Margaret

Neuse, will be introduced. Also ahead are Congressional budget hearings, for which we are preparing statements and Q&As for the USAID Administrator, and State is doing the same for the Secretary. State has also been working on an op-ed for the Secretary and a cable to embassies in countries where USAID has programs.

Thanks very much again for the support and attention you have given to this issue.

Barbara Crane



Office of Population
Bureau of Population Refugees, and Migration
SA-1, Room L-505
U.S. Department of State
Washington, DC 20522-0105
Phone: 202-663-3069
Fax: 202-663-3094
E-mail: m.pollack@state.gov

U.S. State Department

Fax

To:	Shelly Peterson	From:	Margaret Pollack, Director
Fax:	456-7024	Pages:	3+cover
Phone:	456-7804	Date:	January 21, 2000
Re:	Comments on USAID 2-Page Brief on FY 2001 International FP Restrictions	CC:	

☐ **Urgent**

• **Comments:**

Shelly: Attached are Ann Lewis' comments on the two-page brief Barbara Crane at USAID sent to you re FY 2001 restrictions on international family planning. I sent them to Ann, who is in Geneva this week, for comment – given her role in all this. You will see that she had no comments on the first page, but did have a few suggestions for page 2. I have shared Ann's comments with Barbara, and she is working on a revised version based on Ann's comments, and will be sending those revisions to you shortly.

As you know from Barbara, we are all in the midst of preparing briefers, talking points, Q's and A's, cables to the field on much of this. Certainly what we send out from State (or have the Secretary say in upcoming Congressional budget briefings) we will want to make fully consistent with what the Secretary and President have said publicly, and with what USAID is preparing. Perhaps we may even want to think about making the USAID two-pager into more of a policy paper out of the State Department.

In any event, thought you would be interested in Ann's comments, knowing that you are all meeting at 3:30 p.m. today. We all look forward to hearing about the outcome

Please don't hesitate to call if you want to discuss or have questions. Many thanks. Margaret

01/21/0001/21/0001/21/0001/21/00

From: Ann Lewis

Date: 1/20/00

Greetings from Geneva. A few suggestions

For Page 2:

A. Reorder bullets so #1 is Family Planning Assistance promotes women's & children's health (in bold)

Rewrite first paragraph of this bullet to read:

Access to family planning is one of the most effective ways to promote good health ~~and~~ for women & children and reduce the nearly 600,000 maternal deaths and millions of infant deaths that occur each year as a result of complications from pregnancy & childbirth. Research demonstrates that offering family planning enables women to choose the number & spacing of their children, prevent unintended pregnancy & thus avoid recourse to abortion.

B. Bullet #2 is then Waiver limitations jeopardize etc; #3 International family planning underfunded. (same)

C. Can you clarify 2nd sentence in 2nd paragraph, beginning "At least 150 million couples Do we mean they do not use" or "do not have access to" ? Because ~~used~~ ^{wrote} "do not use" could be interpreted to mean they don't want to.

D. Set out statement by POTUS with bold head so it does not look like ~~telegraph~~ more of # 3. It's stronger on it's own, perhaps with headline like
President Clinton has addressed this issue or Pres Clinton supports international family planning.

→ **Waiver limitations jeopardize NGO programs and funding**

- Implementation of the \$15 million cap requires a burdensome certification process to determine which USAID-funded organizations are or plan to be involved in abortion-related activities in their own countries with non-U.S. funds. These same activities -- performing abortions and participation in the policymaking process -- are legal in the United States. However, organizations that certify will be prohibited from undertaking these activities in their own or other foreign countries, even when it is legal to do so.

- The cap also may require USAID to reduce funding for non-certifying organizations that have proven to be effective providers of family planning information and services to poor women and their families.

→ **Family planning assistance promotes women's and children's health**

results - Offering family planning is the best way to help a woman prevent an unintended pregnancy, and thus avoid recourse to abortion. Research also demonstrates that access to family planning is one of the most effective ways to reduce the nearly 600,000 maternal deaths and millions of infant deaths that occur each year as a result of complications from pregnancy and childbirth.

- Family planning programs are also a critical weapon in the global effort to reduce the transmission of HIV/AIDS and other sexually-transmitted diseases.

- When access to family planning services is reduced, unintended pregnancies, maternal and infant deaths, and abortions have been shown to increase.

→ **International family planning is already underfunded**

For the past three years (fiscal years 1997-99), USAID international family planning assistance has been set at \$385 million, a level 30% lower than it was in fiscal year 1995. For fiscal year 2000, this level is reduced even further, to \$372.5 million.

Though family planning services are more widely available than ever, unmet need for such services is high and continues to increase. At least 150 million couples in the developing world want to limit or space their children, but are not using modern methods of contraception. At the same time, the largest youth generation in history -- over 1 billion young men and women between the ages of 15-24 -- are entering their reproductive years.

READ On January 8, 2000, President Clinton stated:

"My budget for 2001 will increase funding for international family planning by almost \$170 million [to the fiscal year 1995 level of \$541.6 million]. I am asking Congress to support these funds, and to provide them without restrictions that hamper the work of family planning organizations, and even bar them from discussing or debating reproductive health policies.

We all agree that we want to save lives, help women and children stay healthy and empower families to take responsibility for their own choices. Supporting reproductive health and family planning is one of the very best ways to do that. We know it works. At home and abroad, we don't have a woman's life -- or a child's healthy start -- to waste."

Prepared January 2000.

HEURE DE RÉCEPTION 19. JAN. 20:03

HEURE D'IMPRESSION 19. JAN. 20:05

From: Barbara Crane G. PHN. POP AIDW
Cc: Patricia Ramsey GC Aidw
Subject: Population: Revised guidance
Attachment: CERTGUIDE-SP.DOC,BEYOND.RTF
Date: 01/24/2000 2:24 PM

Shelly --

Attached is a revised version of the guidance; there are only changes in 5 b, c, and f.

Pat and I would like to talk to you shortly, anytime in the next half hour before your 3:30 meeting would be great if feasible. Could you call Pat at 202-712-1903 when you're ready and she could put you on hold for a moment long enough to call me to come up (from a couple of floors down) and join her? Then you and she could start talking...!

This may not appear to be responsive to the proposal to include reference to "a call to action". However, it does some other things which we think may be clearer to NGOs reading it, and avoids the term "advocacy" which carries a lot of baggage with it in the same way as the term "lobbying" does. Anyway, best for you and Pat to discuss the rationale here directly.

Thanks!

Barbara

Barbara B. Crane, Ph.D.
Senior Policy Adviser
Office of Population, Rm. 3.06-024
U.S. Agency for International Development
1300 Pennsylvania Avenue, N.W.
Washington, D. C. 20523-3600
Tel: 202-712-5839
Fax: 202-216-3046

January 2000

Guidance for FY 2000 Population Assistance Certification

Section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), requires that certain organizations (hereafter called "covered" organizations) certify they will not engage in specified abortion-related activities, using either USAID or non-USAID funds, during a specified period, in order to be eligible to receive FY 2000 population funds appropriated by PL 106-113 (hereafter "FY 2000 Population Funds"). Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the referenced law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form for purposes of receiving FY 2000 Population Funds. The form provides options for organizations to certify (Option No. 1) or decline to certify (Option No. 2). USAID requires prime awardees that expect to receive FY 2000 Population Funds, both U.S. and non-U.S., to identify their covered subawardees at all levels or "tiers" below the prime agreement and request certification forms from those covered organizations. With the information provided by the forms, USAID will determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap.

The present guidance is provided to assist intermediary organizations to implement the certification procedure with subawardees and assist covered organizations to complete the Certification Form.

1. Which organizations are "covered" by the certification procedure and will be asked to complete the Certification Form?

USAID DRAFT DOCUMENT -- Internal Government Use Only -- January 21, 2000

2

- ◆ Private, non-governmental entities, whether non-profit or profit-making, which are organized under the laws of a country other than the United States, and
- ◆ Multilateral (including global or regional) organizations which consist of member states,

that are scheduled to receive FY 2000 Population Funds, either directly from USAID through a prime contract, grant or cooperative agreement, or as subcontractors or subgrantees (hereafter "subawardees").

2. Which organizations are not "covered" by the certification procedure and will not be asked to complete the Certification Form?

Organizations not covered by the certification procedure include all U.S. government and U.S. private, non-governmental organizations and foreign governments. In addition, under the statute, organizations that receive only in-kind assistance (for example, in the form of technical assistance or commodities) are not covered. Also, commercial firms that are not engaged in family planning activities (for example, firms that supply goods and services of an administrative nature, such as suppliers of computer equipment, office supplies, maintenance or printing services) are not required to complete the certification form.

Organizations that will not receive FY 2000 funding are not requested to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

3. What is the meaning of the certification provision stating the organization "will not perform abortions...?"

The certifying organization certifies that it will not perform abortions in any foreign country (that is, in any country outside the U.S.), except where the life of the mother would be endangered if the pregnancy were carried to

term or in cases of forcible rape or incest. The certification restricts performance of abortion even in countries where abortion is permitted under local law. Provision, consistent with local law, of information or counseling about all pregnancy options is not restricted by the certification. The certification does not restrict organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited"?

The statutory language quoted here refers to activities or efforts by the organization which are intended to change the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited;
- Public outreach activities or efforts (for example, as reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or
- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.

b. Also not covered are activities and efforts ~~which lack an element of advocacy or are not otherwise intended to alter laws or policies~~, which do not endorse or otherwise promote changes in abortion laws or policies, such as:

- i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of existing abortion laws or policies;
- ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and
- iii) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

iv) Sponsorship of a meeting or conference which does not have as its purpose or focus ~~where~~ altering abortion laws or policies ~~is not the purpose or focus,~~ but where the subject arises and is addressed incidentally; or

v) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities or efforts directed to legislators, government officials, or the public are not covered because, ~~although they may involve advocacy, they do not involve altering laws or policies, for example,~~ engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies, and are therefore not concerned with altering abortion laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the circumstances under which abortion is permitted, regulated or prohibited, such as:

i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort that may endorse or otherwise promote changes in abortion laws or

policies but that is ~~which may include an element of advocacy but which is~~ of a de minimis (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort would not be ~~is not~~ reasonably intended or expected by the organization to have the effect of altering ~~alter~~ laws and policies. Examples of such an activity or effort would include:

i) An incidental statement in a publication, meeting, workshop or communication to the mass media which may ~~advocate an alteration~~ may endorse changes in abortion laws or policies but is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

ii) The organization's membership in a network of organizations which may ~~advocate altering~~ endorse or otherwise promote changes in abortion laws or policies, provided such membership does not involve active participation by the organization in such activities or efforts of the network; or

iii) Any other individual activity or effort of the organization that ~~in and of itself may contain an element of advocacy but that~~ is incidental, ~~unintended,~~ or de minimis in nature.

6. If an organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the Certification Form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if an organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the

intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

10. What if one or more subawardees of an intermediary organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are

not covered or that certify, will not count against the cap.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.

January 2000

Guidance for FY 2000 Population Assistance Certification

Section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), requires that certain organizations (hereafter called "covered" organizations) certify they will not engage in specified abortion-related activities, using either USAID or non-USAID funds, during a specified period, in order to be eligible to receive FY 2000 population funds appropriated by PL 106-113 (hereafter "FY 2000 Population Funds"). Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the referenced law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form for purposes of receiving FY 2000 Population Funds. The form provides options for organizations to certify (Option No. 1) or decline to certify (Option No. 2). USAID requires prime awardees that expect to receive FY 2000 Population Funds, both U.S. and non-U.S., to identify their covered subawardees at all levels or "tiers" below the prime agreement and request certification forms from those covered organizations. With the information provided by the forms, USAID will determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap.

The present guidance is provided to assist intermediary organizations to implement the certification procedure with subawardees and assist covered organizations to complete the Certification Form.

1. Which organizations are "covered" by the certification procedure and will be asked to complete the Certification Form?

- ◆ Private, non-governmental entities, whether non-profit or profit-making, which are organized under the laws of a country other than the United States, and

- ◆ Multilateral (including global or regional) organizations which consist of member states,

that are scheduled to receive FY 2000 Population Funds, either directly from USAID through a prime contract, grant or cooperative agreement, or as subcontractors or subgrantees (hereafter "subawardees").

2. Which organizations are not "covered" by the certification procedure and will not be asked to complete the Certification Form?

Organizations not covered by the certification procedure include all U.S. government and U.S. private, non-governmental organizations and foreign governments. In addition, under the statute, organizations that receive only in-kind assistance (for example, in the form of technical assistance or commodities) are not covered. Also, commercial firms that are not engaged in family planning activities (for example, firms that supply goods and services of an administrative nature, such as suppliers of computer equipment, office supplies, maintenance or printing services) are not required to complete the certification form.

Organizations that will not receive FY 2000 funding are not requested to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

3. What is the meaning of the certification provision stating the organization "will not perform abortions..."?

The certifying organization certifies that it will not perform abortions in any foreign country (that is, in any country outside the U.S.), except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest. The certification restricts performance of abortion even in countries where abortion is permitted under local law. Provision, consistent with local law, of information or counseling about all pregnancy options is not restricted by the certification. The certification does not restrict

organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited"?

The statutory language quoted here refers to activities or efforts by the organization which are intended to change the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign

country concerning the circumstances under which abortion is permitted, regulated, or prohibited;

- Public outreach activities or efforts (for example, as reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or
- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.

b. Also not covered are activities and efforts which are not intended to promote changes in abortion laws or policies, such as:

i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of existing abortion laws or policies;

ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and

iii) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

iv) Sponsorship of a meeting or conference where existing abortion laws and policies are addressed, but where changes in such laws and policies may only be raised and dealt with in an incidental or minimal way;

v) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities or efforts directed to legislators, government officials, or the public are not covered because they involve engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies, and therefore are not concerned with altering abortion laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the circumstances under which abortion is permitted, regulated or prohibited, such as:

- i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

- ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort that may endorse or otherwise promote changes in abortion laws or policies but that is of a *de minimis* (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort would not be reasonably intended or expected by the organization to have the effect of altering laws or policies. Examples of such an activity or effort would include:

- i) An incidental statement in a publication, meeting, workshop or communication to the mass media which may endorse changes in abortion laws or policies but is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

- ii) The organization's membership in a network of organizations which may intentionally promote changes in abortion laws or policies, provided such membership

does not involve active participation by the organization in such activities or efforts of the network; or

iii) Any other individual activity or effort of the organization that is incidental or *de minimis* in nature.

6. If an organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the Certification Form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if an organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

10. What if one or more subawardees of an intermediary organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or

decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.

is permitted, regulated, or prohibited;

- Public outreach activities or efforts (for example, as reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or
- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.

b. Also not covered are activities and efforts ~~which lack an element of advocacy or are not otherwise intended to alter laws or policies, which do not endorse or otherwise promote changes in abortion laws or policies,~~ such as:

i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of existing abortion laws or policies;

ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and

iii) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

iv) Sponsorship of a meeting or conference which does not have as its purpose or focus ~~where~~ altering abortion laws or policies ~~is not the purpose or focus,~~ but where the subject arises and is addressed incidentally; or

v) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities or efforts directed to legislators, government officials, or the public are not covered because, ~~although they may involve advocacy, they do not involve altering laws or policies, for example,~~ engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies, and are therefore not concerned with altering abortion laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the circumstances under which abortion is permitted, regulated or prohibited, such as:

- i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

- ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort *that may endorse or otherwise promote changes in abortion laws or policies but that is which may include an element of advocacy but which is* of a de minimis (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort *would not be is not* reasonably intended or expected by the organization to have the effect of altering ~~alter~~ laws and policies. Examples of such an activity or effort would include:

- i) An incidental statement in a publication, meeting, workshop or communication to the mass media which may ~~advocate an alteration~~ *may endorse changes* in abortion laws or policies but is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

ii) The organization's membership in a network of organizations which may ~~advocate altering~~ endorse or otherwise promote changes in abortion laws or policies, provided such membership does not involve active participation by the organization in such activities or efforts of the network; or

iii) Any other individual activity or effort of the organization that ~~in and of itself may contain an element of advocacy but that~~ is incidental, unintended, or *de minimis* in nature.

6. If an organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the Certification Form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if an organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. What if an organization certifies, but never receives FY

2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

10. What if one or more subawardees of an intermediary organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification

Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.

organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited"?

The statutory language quoted here refers to activities or efforts by the organization which are intended to change the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign country concerning the circumstances under which abortion