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April 4, 2006

The Honorable Condoleezza Rice
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Madam Secretary:

Today the Government Accountability Office released a report entitled "Spending Requirement Presents Challenges for Allocating Prevention Funding under the President's Emergency Plan for AIDS Relief." The mild title belies the report's deeply troubling content: the Administration's implementation of an abstinence requirement is impeding the global response to the HIV/AIDS epidemic.

An amendment to the global AIDS bill enacted in 2003 requires that 33% of prevention funds be spent on abstinence-until-marriage programs. The Administration expanded this requirement by applying it to other funding streams and by instituting policies that effectively raise the earmark above 33% for many countries. GAO's investigation reveals that these requirements are hindering U.S. efforts to stop the spread of HIV/AIDS.

GAO found that U.S. officials in 17 of 20 countries covered by the abstinence requirements reported that U.S. policy on abstinence is restricting their ability to respond to local need in preventing HIV/AIDS transmission. GAO also found evidence that the U.S. policy on abstinence is compelling U.S. officials in the field to spend less money on the prevention of mother-to-child transmission, an intervention that saves the lives of newborns and gives them the chance to grow up free of HIV.

Abstinence education for appropriate populations is an important component of a comprehensive HIV/AIDS prevention strategy. But countries must have the flexibility to design prevention strategies based on their local needs and the best scientific evidence – not political ideologies. I therefore call for immediate changes to the Administration's policies and request further information to inform congressional reconsideration of the abstinence spending requirement.

The Legislative Abstinence Requirement

The President's Emergency Plan for AIDS Relief, or PEPFAR, provides funds for the treatment, care, and prevention of HIV/AIDS. On top of an existing $5 billion commitment for global HIV/AIDS over five years, the law creating PEPFAR authorized $10 billion for a new Global HIV/AIDS Initiative Account, targeting $9 billion dollars to fifteen "focus countries" with extremely high need, mostly in sub-Saharan Africa.[1]

While some grants have been made centrally from Washington, grants from the account are made primarily by PEPFAR staff in the field referred to as "country teams."

The law recommends, but does not require, that 20% of funds appropriated pursuant to the Act go toward prevention activities.[2] Conservative House lawmakers added an amendment, requiring that 33% of any prevention funds be spent on programs promoting abstinence until marriage. The 33% abstinence requirement was a recommendation for the first two years of the program. It became binding beginning in 2006.[3]

The Administration's Implementation Policies

As directed by the legislation, the Office of the Global AIDS Coordinator (OGAC) has implemented an "ABC" prevention model: Abstinence, "Be faithful," and Condoms. Both "A" and "B" programs — programs promoting abstinence and programs promoting "be faithful" messages — can apply toward the 33% earmark for abstinence education.

GAO's report finds, however, that the Administration has adopted two additional policies that extend the abstinence provision beyond the requirements of the 2003 law.

First, GAO found that in its fiscal year 2006 guidance to countries, OGAC required (1) that at least 50% of prevention funds be spent on programs to prevent sexual transmission of HIV and (2) that 66% of the funds spent on programs to prevent sexual transmission be spent on abstinence and be-faithful programs.

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[1] P.L. 108-25. The focus countries are Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, and Zambia.

[2] P.L. 108-25 §402

[3] 22 USC 7672.

OGAC argues that the new interpretation simply implements the requirement that one-third of prevention funding be spent on abstinence programs, because 66% of 50% equals 33%. But in fact, the effect is much different. In many countries, the main route of HIV transmission is through sexual transmission. Country teams in these nations may need to spend more than 50% of their prevention funds on preventing sexual transmission. The new OGAC requirement that 66% of these funds be spent on abstinence programs means that abstinence spending in those countries will be required to exceed 33% of U.S. prevention funds.[4]

Second, GAO found that OGAC has administratively applied the abstinence funding requirements to sources of funds not covered by the 2003 legislation. The one-third abstinence requirement applies, legislatively, to only the Global HIV/AIDS Initiative Account. But GAO found that OGAC is applying the same requirement to all PEPFAR spending on HIV prevention programs. This includes funds from the Child Survival and Health Account; the Freedom Support Act Account; and CDC's Global AIDS Program. Collectively, these accounts will provide $33 million in prevention funding in fiscal year 2006, approximately 10% of total PEPFAR prevention funding.

The Effect on HIV/AIDS Prevention

To assess the effect of the U.S. abstinence policies, GAO conducted an in-depth investigation of HIV/AIDS prevention programming and planning in recipient countries. GAO staff reviewed operational plans and reports, PEPFAR guidance documents, and budget documents. They interviewed federal agency officials in Washington, as well as experts at several nongovernmental organizations.

In addition, GAO conducted structured interviews with PEPFAR country teams comprised of USAID, State Department, CDC/HHS, and other key agency staff working in the fifteen focus countries. Investigators for GAO visited four focus countries, selected based on funding level, HIV prevalence, and prevention focus.[5] For the eleven other focus countries, interviews were conducted by telephone.

Finally, GAO collected information on five nonfocus countries that have received more than $10 million per year in PEPFAR funding.[6] These countries were included in the

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[4] For example, if a country spends 60% of prevention funds on the prevention of sexual transmission, it will have to spend 66% of those funds on abstinence-until-marriage, resulting in 40% of prevention funds going to abstinence.

[5] The four countries visited were Botswana, Ethiopia, South Africa, and Zambia.

[6] These countries were Cambodia, India, Malawi, Russia, and Zimbabwe.

investigation because OGAC decided to apply the abstinence requirement to their U.S. prevention funding.

GAO found that the U.S. abstinence spending requirement is presenting significant challenges to the majority of country teams.

According to GAO, seventeen country teams reported that the abstinence spending requirement "challenges their ability to develop interventions that are responsive to local epidemiology and social norms."[7] For example, one country team reported that abstinence and "be faithful" messages were not appropriate for high-risk groups along transportation corridors, where HIV prevention is extremely important.[8] Another country team told GAO that because rates of premarital sex were already low due to prevailing conservative norms, the abstinence message was not a priority.[9]

GAO specifically found that the Administration's "66% of 50%" policy has significant funding implications. According to GAO, ten of the twenty countries examined by GAO received exemptions from the abstinence spending requirements.[10] However, other countries were not eligible to apply for exemptions under OGAC's guidelines.[11] In the countries that did not receive exemptions, the "66% of 50%" requirement is forcing many country teams to spend more than 33% of their U.S. prevention dollars on abstinence programs. According to GAO, eight out of the ten nonexempt countries planned to spend more than 50% of U.S. prevention funds on sexual transmission and therefore have to spend more than 33% on abstinence programs.[12]

GAO also found that the policy decision to apply the abstinence spending requirements to accounts outside of the Global HIV/AIDS Initiative Account has meant that "country teams are constrained from allocating non-GHAI funding to meet local needs."[13] The funding impact of

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[7] GAO at 34.

[8] GAO at 37.

[9] *Id.*

[10] GAO at 36.

[11] GAO at 37. OGAC did not permit countries with PEPFAR budgets above $75 million, a generalized epidemic, or both, to apply for exemptions.

[12] GAO at 40.

[13] GAO at 44.

this decision is particularly stark in the five nonfocus countries where OGAC decided to apply the abstinence requirement — Cambodia, India, Malawi, Russia, and Zimbabwe. In these nations over 80% of prevention funding from the United States came from accounts other than Global HIV/AIDS Initiative Account.[14]

In GAO's draft report, GAO recommended that the abstinence requirement not be applied to funds to which it is not legally required to apply. This recommendation, however, was removed from the final report after the Administration objected. If the policy continues, as the Administration is insisting, the effect may well be to misallocate funds in countries with fast-growing HIV epidemics driven primarily by intravenous drug use or commercial sex, such as Russia and India.

Overall, GAO found that the abstinence requirement has led to declines in the proportion and amount of spending on comprehensive prevention programs, including those that provide accurate information about condoms. Countries subject to the abstinence requirement reported having to cut or limit funds for comprehensive prevention programs, condom programs, interventions for high risk groups, and programs to decrease transmission by those already infected with HIV.[15] According to GAO, in focus countries that did not receive exemptions from the abstinence requirement, funds for condoms and "other prevention" such as substance abuse treatment dropped from 23% of total U.S. prevention funds to 18% after the abstinence spending requirement became binding, with an absolute decline of $5 million in funds.[16] Over the same period, spending on abstinence programs in these countries rose from 27% to 36%.[17]

Impeding Efforts to Prevent Mother-to-Child Transmission

In a deeply troubling development, GAO also found that the abstinence requirement is hindering efforts to reduce mother-to-child transmission of HIV.

Mother-to-child transmission of HIV is a serious problem in many nations. According to OGAC:

> It is estimated that 2.2 million children, defined as those under the age of 15, are living with HIV/AIDS, constituting 13% of new HIV/AIDS infections and accounting for 17%

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[14] GAO at 44.

[15] GAO at 38-39.

[16] GAO at 42.

[17] GAO at 43.

> of HIV/AIDS deaths annually. Over 1.2 million HIV-positive children live in 15 Emergency Plan focus countries, as reflected in Table 3. In some southern African countries, as many as 40-60% of deaths of children less than 5 years old have been attributed to AIDS. Where care and treatment are not available, studies suggest that 35% of infected children die in the first year of life, 50% by their second birthday, and 60% by their third birthday.[18]

Without any intervention, if a pregnant woman has HIV, there is a 30% to 45% chance of HIV transmission to the infant at birth or during breastfeeding. But an inexpensive treatment with antiretroviral therapy can reduce the risk of transmission by as much as half in developing country settings.[19]

GAO found that the abstinence spending requirement is having a negative effect on the ability of non-exempt country teams to fund programs for prevention of mother-to-child transmission (PMTCT). According to GAO:

> In fiscal year 2005, the spending requirement led one country team to reduce planned funding for its PMTCT program, thereby limiting services for pregnant women and their children. ... This focus country lacks a health care system for providing PMTCT services and, as a result, the team has had significant trouble reaching its target for preventing infections through PMTCT activities. However, at the start of fiscal year 2005, OGAC directed the country team to reduce planned funding for PMTCT in order to dedicate more funding to AB activities, because the team's allocation of prevention funds to AB fell short of 33 percent.
>
> In another country, where the U.S. government has been the largest supporter of the PMTCT program, the team told us that complying with the spending requirement would likely force it to shift resources away from PMTCT and thus reduce needed PMTCT commodities and services.[20]

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[18] Office of the Global AIDS Coordinator, *Focusing on Our Future: Prevention, Diagnosis, and Treatment of Pediatric HIV/AIDS* (Sept. 2005) (online at http://www.state.gov/s/gac/rl/more/2005/pediatric/index.htm).

[19] Joint United Nations Program on HIV/AIDS, *Mother to Child Transmission* (online at http://www.unaids.org/en/Issues/Affected_communities/mothertochild.asp).

[20] GAO at 39.

GAO also noted that the USAID Inspector General found that the first country's PMTCT-prevented infections fell "significantly short" of its annual target.[21]

Overall, GAO found that in focus countries that did not receive exemptions from the abstinence spending requirement, the proportion of U.S. funds on PMTCT programs declined. Over all countries, including those with exemptions, total PMTCT funding increased by just $1 million, while total abstinence funding increased by $32 million.[22]

Lack of Guidance and Integration

Compounding these problems, GAO found that OGAC has not provided clear guidance on how to meet the abstinence spending requirements. Ten of the focus country teams interviewed by GAO reported that "elements of the guidance were ambiguous and confusing, leading to difficulties in its interpretation and implementation."[23] One problem the country teams identified involves the definitions of high-risk groups and of permissible "C" or condom-related activities. For example, the country teams reported to GAO that OGAC guidance states that condoms may not be "promoted" in school settings, but has not clarified what constitutes "promotion" as opposed to education.

Similarly, GAO found that the country teams reported a lack of clarity in OGAC requirements for HIV/AIDS prevention for mixed-age groups. OGAC policies do not allow condom instruction for adolescents under fifteen. However, some country teams noted that because of resource limitations, classroom or program settings often include adolescents of many ages. Under OGAC's policy, teens fifteen and above, who have the right to information about condom use, would be unable to access it if they learn in mixed-age settings.

GAO also found that eight focus country teams reported that the abstinence spending requirement hinders effective integration of HIV/AIDS prevention programs.[24] The need to report on abstinence funds led to disaggregation of different elements of programs that would otherwise provide a comprehensive set of messages. In addition, programs lacked the flexibility to change their focus based on the need of the clients.

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[21] *Id.*

[22] GAO at 43.

[23] GAO at 5.

[24] GAO at 35.

Conclusion

The GAO report reveals a serious shortcoming in the U.S. approach to the global AIDS crisis. The legislative abstinence spending requirement and the Administration's overbroad implementation of the requirement are impeding prevention efforts in the countries most hard-hit by the AIDS epidemic. In some nations, the U.S. policy is even cutting into funds that would be used to prevent mother-to-child transmission.

The legislative abstinence requirement may satisfy a narrow political constituency, but it is not based in science or local needs and should be re-evaluated. I urge you to join with GAO in calling on Congress to reconsider the wisdom of requiring a fixed allocation for abstinence programs.

In addition, I ask that you immediately instruct the Office of the Global AIDS Coordinator to:

1. Cease application of any abstinence requirements to funding that is not actually covered by the legislative requirement; and

2. Remove the "66% of 50%" requirement that extends the reach of the abstinence program beyond the terms of the 2003 legislation.

Finally, I request the following information related to U.S. efforts to prevent the global spread of HIV/AIDS:

1. All formal and informal guidelines on prevention programming and budgeting that have been drafted or distributed since 2003;

2. Information on PMTCT spending in all focus countries, including country plans and requests, exemption requests, and any programs that were cancelled or scaled back; and

3. A detailed description of OGAC's targeted evaluations of the effectiveness of abstinence programs in combating HIV transmission.

I request a response by April 25.

Sincerely,

Henry A. Waxman
Ranking Minority Member