

## IN JANUARY, PEPFAR TURNED 20 – POLITICIZING ITS REAUTHORIZATION THIS YEAR WOULD BE DISASTROUS

Twenty years ago, at his 2003 State of the Union address, then President George W. Bush launched the President’s Emergency Plan for AIDS Relief (“PEPFAR”). At the time, communities in many parts of sub-Saharan Africa were being devastated by HIV/AIDS, and \$15 billion was allocated to be spent over a five-year period to address the scourge of HIV/AIDS in countless vulnerable communities. Today, PEPFAR is a \$6.9 billion per-year-program, with approximately \$4.8 billion provided for bilateral HIV efforts and \$2.05 billion representing the US contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria<sup>1</sup> (the “Global Fund”), according to an April 2023 [paper](#) published by Kaiser Family Foundation (“KFF”). PEPFAR works to accelerate progress towards control of HIV/AIDS in more than [50 countries](#), including 29 in Africa.

PEPFAR is up for congressional reauthorization this year. It is important that the program be reauthorized, and that the reauthorization is “clean.”

### Background

PEPFAR has been described in a March 2023 KFF [update](#) by Kellie Moss and Jennifer Kates as the US government’s signature global health effort in the fight against HIV/AIDS and is “broadly regarded as one of the most successful programs in global health history.” According to the [PEPFAR homepage](#) on the State Department website, over the past 20 years, under PEPFAR,

- 20.1 million women, men and children have received life-saving antiretroviral treatments;
- 25 million lives have been saved;
- 5.5 million babies have been born HIV-free; and
- 7.0 million orphans, vulnerable children and caregivers have received critical care and support.

To date, PEPFAR funding has totalled more than \$110 billion. David J. Kramer, Executive Director of the George W. Bush Institute, [describes](#) PEPFAR “as one of the most successful foreign assistance programs ever.”

Following the call to arms, Congress passed authorizing legislation on a bipartisan basis in 2003, which established the program, its structure (including the creation of a US Global AIDS Coordinator at the State Department, with the rank of Ambassador – currently Ambassador Dr. John Nkengasong) and initial funding authorization levels. The program is managed and overseen by the Office of the US Global AIDS Coordinator and Global Health Diplomacy, and implemented through [seven](#) government departments and agencies.

As Emily Bass [wrote](#) in her article, “PEPFAR’s Twentieth Anniversary Might Be Its Last,” in which she urges that the PEPFAR structure remain intact, PEPFAR had very different roots: “In a departure from piecemeal, often project-based development funding—a bridge here, a school or clinic there—PEPFAR came with a jaw-dropping budget. Instead of holding aid at

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<sup>1</sup> The Global Fund is a Geneva-based organization representing a partnership of governments, civil society, the private sector and persons affected by the three target diseases.

arm's length, as did many of his Republican counterparts, [George W. Bush] threw his full and passionate support behind this program. And instead of placing the program within one of the fractious U.S. agencies that might claim to have the skills needed to respond to global AIDS, PEPFAR was established by law as an office in the U.S. State Department... . The value of the PEPFAR structure ... cannot be under-estimated.” Being situated at State meant PEPFAR could work directly with heads of government and through US ambassadors, on the ground, in ways that neither USAID nor the CDC could have.

After being reauthorized by Congress in 2008, 2013 and 2018, PEPFAR again is up for reauthorization this year. President Biden has requested \$6.8 billion for PEPFAR for FY 2024. On April 19, the Senate Foreign Relations Committee held the first [hearing](#) of this Congress on PEPFAR reauthorization for the next five years.

### **The Job is Not Finished**

Most experts agree that the job of PEPFAR is not finished. In 2022, PEPFAR released its latest [five-year strategy](#) “Fulfilling America’s Promise to End the HIV/AIDS Pandemic by 2030.” The paper outlines PEPFAR’s approach to contributing to, and supporting global efforts to reach, the target of ending the global AIDS pandemic as a public health threat by 2030, while also strengthening public health systems, as set out in the Sustainable Development Goals (“SDGs”), an ambitious collection of development priorities adopted by 193 countries in 2015.

As summarized in KFF’s April 2023 [paper](#), PEPFAR’s 2030 strategy consists of five strategic pillars (complemented by three sets of enablers: community partnerships, innovation and data):

- ensuring health equity for priority populations;
- achieving long-term sustainability in the HIV/AIDS response;
- leveraging public health systems;
- strengthening partnerships; and
- ensuring programs are guided by science.

The strategy is to align with the [UNAIDS Global AIDS Strategy 2021-2026](#) (“UNAIDS 2021-26”) by:

- reaching global “95-95-95 treatment targets<sup>2</sup> for all ages, genders and population groups;
- reducing new HIV infections dramatically through effective prevention and treatment, in support of UNAIDS targets;
- closing equity gaps for priority populations, including adolescent girls and young women, key populations and children;
- transforming the PEPFAR program towards sustaining HIV impact and long-term sustainability by strengthening the capabilities of governments to lead and manage the program, in collaboration with communities, the private sector and local partners; and

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<sup>2</sup> The UNAIDS 95-95-95 targets are: 95% of all people living with HIV know their status; 95% of all people diagnosed with HIV infection receive sustained antiretroviral therapy; 95% of all people receiving antiretroviral therapy have viral suppression.

- making measurable and sustainable gains in partner country public health systems and health security to strengthen public health prevention, data and response capabilities for HIV and other health threats.

In short, the metrics embedded in the strategy as well as metrics adopted by the global community through the SDGs have yet to be met. *See [KFF Dashboard: Progress Towards Global HIV Targets in PEPFAR Countries](#).*

As the State Department has [noted](#), “Persistent gaps in HIV prevention and treatment services remain in specific countries and for specific populations, and we must all recommit to ending the inequities that still stand in our way which have only been exacerbated by the COVID-19 pandemic. The choices we make now will have critical implications for years to come.”

According to a July 2022 UNICEF report (to be updated next month),

“Adolescents and young people represent a growing share of people living with HIV worldwide. In 2021 alone, 410,000 [confidence bounds: 196,000–650,000] young people between the ages of 10 to 24 were newly infected with HIV, of whom 160,000 [46,000–300,000] were adolescents between the ages of 10 and 19. To compound this, most recent data indicate that only 25 per cent of adolescent girls and 17 per cent of adolescent boys aged 15-19 in Eastern and Southern Africa – the region most affected by HIV – have been tested for HIV in the past 12 months and received the result of the last test. The testing rates in West and Central Africa and South Asia are even lower. If current trends continue, there will still be some 183,000 annual new HIV infections among adolescents in 2030.”

A December 2022 [report](#) by the Government Accountability Office (“GAO”) identified some internal challenges in the PEPFAR program such as agency coordination and program staff vacancies, and the State Department and USAID have accepted the GAO recommendations. In its September 2022 report, [Reimagining PEPFAR’s Strategic Direction](#), the State Department set out its roadmap “to accelerate the path to respond and end the HIV/AIDS pandemic as a public health threat by 2030 [(the target of SDG-3)] and sustainably strengthen public health systems.” Among the five pillars of the roadmap is achieving health equity for priority populations, including women and girls, and members of the LGBTQ+ communities.

Deborah L. Blix, M.D. and Dr. William R. Steiger offered their views on next steps in a [post](#) on behalf of the George W. Bush Institute.

### **Congress Needs to Act**

Many have called, on a bipartisan basis, for congressional reauthorization. Sens. Graham, Boozman, Coons and Van Hollen in an April 2023 [editorial](#) published in The Hill, characterized PEPFAR as having “changed the course of history” and urged its reauthorization. Sandhya Raman in a May 2023 [post](#) in Roll Call quotes Sen. Menendez as strongly supporting reauthorization and quotes Senator Jim Risch as cautioning against dramatic revisions to PEPFAR – the program “is too important for that.”

That said, the 118<sup>th</sup> Congress has gotten off to a rocky start. We have already seen moves by the Freedom Caucus to hold legislation hostage, after a fraught legislative exercise to address the debt ceiling. As Tina Reed [writing](#) in Axios (February 2023) notes, “Despite past bipartisan support, PEPFAR has been flat-funded for years and could fall victim to partisan

fighting and shifting public health priorities. This five-year renewal partly hinges on whether there are any basic changes to the program, or whether lawmakers opt for a ‘clean’ reauthorization.” Last week, members of the Freedom Caucus leveraged the thin GOP margin (underscoring Speaker McCarthy’s tenuous hold on his caucus) by weaponizing a routine procedural measure on the floor of the House to win policy concessions or, more likely since there did not seem to be demands on offer, to exact revenge for the perceived betrayal of concessions made during the speakership elections over raising the debt ceiling.

### **What if PEPFAR is Not Reauthorized?**

[Moss and Kates](#) note that if PEPFAR were not to be reauthorized, the program would continue, provided funds were appropriated. However, while PEPFAR operates largely under permanent authorities of US law, certain requirements are time-bound and would “sunset” if a reauthorization bill were not passed (Congress could, for example, simply extend the dates of these time-bound provisions in a reauthorization bill) or if Congress does not address them in another legislative vehicle.

There are seven requirements that would “sunset” after FY 2023, and one that would end after FY 2024, if not addressed – two affect how HIV funding is allocated, four specify requirements related to the US contributions to the Global Fund and two affect reporting or oversight. In theory, while reauthorization and appropriation typically occur concurrently, Congress could continue to appropriate funding without reauthorization. (See Moss and Kates’ August 2022 [update](#).)

As Tom Hart, president of the One Campaign noted in a February [interview](#) with Zachary Wolf of CNN, failure to get the program reauthorized would be problematic given the importance, in his view, of maintaining bipartisan support. He also highlighted rule changes in the House (in fact, demands of conservative lawmakers, see *e.g.*, [H.R. 1518](#)) intended to terminate the funding of federal programs whose authorizations have expired.

### **The Overseas Dimension of the US Culture Wars**

A politicized PEPFAR is in no one’s interest. On January 28, the Administration, in marking the 20<sup>th</sup> anniversary of former President Bush’s announcement of PEPFAR, [cited](#) its commitment, in ending the HIV/AIDS pandemic, to “ensuring all LGBTQI+ individuals are treated with dignity and respect [and to] closing the pernicious gender gaps.”

A recent [article](#) by Michael Igoe and Adva Saldinger in Devex (June 5, 2023) cautions that an effort to cast PEPFAR as a source of funding for abortions by conservative and anti-abortion activists has some advocates worried that reauthorization could be upended.

### **Congressional Efforts**

Some history first: the 1973 Helms Amendment (to the Foreign Assistance Act of 1961), which remains in effect and can only be overturned by an act of Congress, bans the federal government from providing direct funding of abortions overseas “as a method of family planning.” This specifically excludes rape, incest and “life of the mother.” In 1984, then President Reagan announced the so-called Mexico City policy, known in Democratic circles as the “global gag rule.” It mandates that the US government may not fund any organization that uses *any* of their money (regardless of source) to advocate for, or perform, abortions. The global gag rule has been rescinded by Democratic presidents and reinstated by

Republican presidents (as of 2021, it had been in effect for 21 of the preceding 36 years), in most cases via presidential memorandum, which has the same force as executive orders.

A congressional effort last summer to overturn the Helms Amendment, the [Abortion Is Health Care Everywhere Act](#) (which would have needed 60 votes in the Senate), failed. Repeal of the global gag rule would significantly affect access to legal abortion in a large number of countries, principally those in Africa. A January 2022 KFF report, [The Helms Amendment and Abortion Laws in Countries Receiving U.S. Global Health Assistance](#), found that 48 of the 56 countries then receiving US global health assistance (84%) allow for abortion in at least one circumstance. These 48 countries (30 of which are in Africa) account for 95% of US global health assistance for family planning and reproductive health: maternal and child health: and PEPFAR – of the 48 countries, 14 allow abortion in only or more exceptional circumstances and the balance allow abortion beyond these circumstances.

The Siljander Amendment, adopted in 1981, prohibits the use of foreign assistance funds to lobby overseas for or against abortion. Initially it prohibited only lobbying for abortion, but subsequently was modified to include lobbying against abortion as well. (See [USAID Guidance](#).)

Separately, the Leahy Amendment, adopted in 1994, allows for the provision of information and counselling about all pregnancy options in programs funded by US foreign assistance.

### ***Recent Developments***

In January 2021, President Biden [rescinded](#) the global gag order imposed by the Trump administration, which had gone further than prior iterations in restricting all types of global health assistance. (See generally, KFF’s “[The Mexico City Policy: An Explainer](#).”)

The June 2022 *Dobbs* decision, while affecting only domestic law, also brought the issue of abortion back to the fore.

Despite the legal certainty as to congressional limits, according to an August 2022 [letter](#) signed by 105 civil society organizations and addressed to Secretary of State Blinken and USAID Administrator Power (both of whom had issued statements following *Dobbs* (see [Blinken statement](#) and [Power tweet](#)) reinforcing their commitments to helping provide reproductive health services overseas for US government employees), there is much confusion as to the overseas impact of *Dobbs*, and many overseas aid recipients continue to misinterpret the Helms Amendment as imposing a total ban. In fact, the recipients could provide abortion care in cases of rape, incest and life endangerment and offer abortion information and counselling. (See, e.g., Rep. Jan Schakowsky interview [quoted](#) in Forbes.)<sup>3</sup>

It is worth repeating that the August 2022 [civil society letter](#) recites that neither the State Department nor USAID has funded abortion services in cases of rape, incest and life

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<sup>3</sup> A May 2022 GAO report, [International Family Planning Assistance](#), found significant confusion and fear on the part of overseas implementing partners resulting from the Trump administration’s reinstatement and expansion of the global gag rule, which contributed to service reduction, including emergency contraception and referrals for other types of family planning services not prohibited by US law.

endangerment, although they could do so without breaching congressional limitations on abortion funding.

The August 2022 [civil society letter](#) also underscored the need for guidance on what is permissible under US law and called for the standards to make clear what is permissible rather than only what is prohibited.

A separate [letter](#), signed by 11 Democratic Senators and addressed to USAID Administrator Power last August, called on USAID to clarify “that the *Dobbs* decision does not impact the ability of aid recipients to provide the full range of legally authorized family planning and reproductive health services allowed prior to the decision” and to address ongoing confusion about the impact of the rescission of the global gag rule.

The *Dobbs* decision not only exacerbated existing confusion over the scope of congressional restrictions, but also galvanized anti-abortion-rights-activists (*see, e.g.*, June 2022 reporting in [POLITICO](#)) as well as conservative political and religious groups that the Global Philanthropy Project labels the “[anti-gender](#)” movement and which it estimates has deployed significant funding overseas, particularly in Africa. *See* reporting by Michelle Onello in MS., [U.S. Overturn of Roe Will Embolden Anti-Abortion Movements Abroad](#), who quotes the Reproductive Health Network executive director that *Dobbs* will embolden, for example, the well-organized anti-reproductive rights justice movement in Kenya, which receives, unlike reproductive rights groups, unrestricted funding. Onello reports a broad desire from aid recipients for clear messaging from the US government on what is/is not permissible under US law.<sup>4</sup>

### ***The Attacks on Global Health***

The June 5 Devex [article](#) cites a May 2023 [report](#) by Tim Meisburger of the Heritage Foundation that calls for PEPFAR to transition to more country ownership and co-financing, and be restructured as development assistance under USAID rather than an emergency response under the auspices of the State Department. The report then dives straight into the culture wars: somehow PEPFAR has become a leftist agenda item – and “a well-funded vehicle to promote [the Biden administration’s] domestic radical social agenda... .” This, the author surprisingly attributes to “almost all political contributions from employees of PEPFAR agencies and assistance providers [having] gone to Democratic candidates and causes, revealing that PEPFAR is in fact an entirely Democrat-run program.”

Adva Saldinger also [reported](#) in Devex (June 7, 2023) that Rep. Chris Smith, a former champion of PEPFAR, has weighed in claiming that PEPFAR is being used to fund abortions. In early May, 31 conservative groups and anti-abortion groups, in a [letter](#) addressed to ranking Republican lawmakers, cited their concerns that PEPFAR funds are being used by NGOs “that promote abortions and are pushing a radical gender ideology overseas.”

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<sup>4</sup> *See also* PMNCH [Media Release](#), “The U.S. Supreme Court’s ruling to overturn *Roe v. Wade* will have repercussions from Africa to Latin America, say women’s health advocates,” reporting on the ways in which *Dobbs* had emboldened overseas targeted-efforts by anti-abortion groups. MSI Reproductive Choices, for example, often has [cited](#) US-linked groups seeking to roll back efforts to expand abortion access through well-funded lobbying efforts and misinformation campaigns.



Just last month, the House Foreign Affairs Committee Chair Michael McCaul and Vice Chair Ann Wagner sent a [letter](#) to the acting Senior Official of the Secretary’s Office of Global Women’s Issues (“S/GWI”) requesting information around gender equity/equality and compliance with the restrictions on the use of taxpayer funds to perform or promote abortions. S/GWI does not receive or program global health assistance.

McFaul and Wagner, among other things, express concerns that using funds to advance *women’s economic empowerment* will be diminished if the focus is expanded beyond the narrow scope of women’s entrepreneurship, a theme embraced by the previous Administration, to include issues such as climate change, gender-based violence and global health. They specifically cite as their predicate President Biden’s June 2021 [commitments](#) to the Generation Equality Forum, and characterize the “UN Women Generation Equality” initiative as “problematic.”<sup>5</sup> They also express concern with any focus on “gender” rather than the needs of “women and girls,” while inquiring specifically about terminology, including “woman,” “reproductive coercion,” “sexual and reproductive health and rights,” “women’s rights” and “gender perspectives,” among others – all red flags to culture warriors.

In late May, the Global Fund, PEPFAR and the Joint UN Programme on HIV/AIDS [expressed](#) deep concern about the harmful impact of Uganda’s draconian Anti-Homosexuality Act on its progress on the country’s HIV response. This could play into the culture war narrative that conservative groups are seeking to leverage.

### **The Geopolitical Dimension**

There is, as Michelle Gavin of the Council on Foreign Relations noted in her [post](#) this past January, a second mismatch that has implications for current day imperatives to address the shifting geopolitical landscape, at times described as the emergence of a multipolar world (*see my previous note, available [here](#)*). While fighting HIV/AIDS has been a priority for the United States in Africa, and myriad African partners, ranging from public health officials to civil society groups focused on improving health in their communities, value the partnership and unprecedented resources that flow through PEPFAR, it is not the same priority for African governments or, indeed, for African citizens, for whom job creation and, in a number of countries, security issues are top priorities. Gavin notes (citing a CRS [report](#)) that roughly 70% of US assistance in Africa over the past decade has been aimed at addressing health issues, primarily through PEPFAR, raising the question of how best to recalibrate US assistance in the region to become “a relevant, credible partner on the continent.”

### **Concluding Thoughts**

Efforts to politicize the reauthorization should be called out for what they are, and every effort should be made to marshal bipartisan support for reauthorization this year.

The culture war-inspired attacks on gender dynamics fail to appreciate that these dynamics, in sub-Saharan Africa, are a driver of high rates of HIV/AIDS. As noted in a November 2019

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<sup>5</sup> The commitments reflect the Administration’s domestic and global priorities to prevent and respond to all forms of gender-based violence, strengthen women’s economic security and protect and advance sexual and reproductive health and rights. The third of the three priorities included rescission of the global gag order, as well as funding to support the provision of sexual and reproductive health services in fragile contexts.

[article](#) in The Lancet, “HIV risk is six times higher among young women than among men in southern Africa and three times higher in eastern Africa.” As noted in a [recent article](#), “HIV and adolescent girls and young women in sub-Saharan Africa: A call for expedited action to reduce new infections,” which appeared on the website of the National Center for Biotechnology Information, quoting from [UNAIDS](#) statistics, adolescent girls and young women accounted for 63% of all new HIV infections in 2021. UNAIDS 2021-26 attributes these high rates of HIV acquisition to, among other drivers, harmful social norms and practices (*i.e.*, FMG) and sexual and gender-based violence. Sexual violence and sex (voluntary or not) with men in their 20s and 30s is the primary acquisition source of HIV for adolescent girls and young women.

Additionally, there is a growing recognition of the correlation between climate change-induced migration and sexual violence (*see, e.g.*, UNHCR, “[Climate change exacerbates violence against women and girls](#)” and UN Women, “[Explainer: How gender inequality and climate change are interconnected](#)”).

Addressing the broader question of how best to engage in Africa is equally urgent, but that should be a parallel effort, although the PEPFAR track record is at odds with the common refrain from African leaders that the United States sees Africa only through a security lens. In the larger scheme of things, funding allocated to PEPFAR is a fraction of the funding that should be allocated to investing in Africa for broader geopolitical and national security purposes.

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