



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

GUIDANCE FOR IMPLEMENTING THE "TIAHRT" REQUIREMENTS FOR VOLUNTARY FAMILY PLANNING PROJECTS

INTRODUCTION

The Tiahrt amendment, which was enacted in the 1999 Foreign Operations Appropriations Act, reflects the same values and principles concerning voluntary family planning projects and informed choice that have guided USAID family planning assistance since its inception. The requirements of the Tiahrt amendment are being implemented through a new standard clause/provision, entitled "Requirements for Voluntary Family Planning Projects" (the Tiahrt clause), which will be added to existing clauses/provisions in USAID contracts, grants, and cooperative agreements that provide population assistance under the Development Assistance account. The Questions and Answers that follow provide guidance for the application of the Tiahrt clause. USAID will continue to implement other statutory and policy requirements and objectives in accordance with existing guidelines, which include: Population Assistance, USAID Policy Paper, September 1982; Policy Guidelines on Voluntary Sterilization (PD-3), September 1982; and the USAID Administrator's Message of May 14, 1998 to all USAID staff on informed choice and informed consent.

GENERAL QUESTIONS

1. In summary, what are the principal requirements of the "Tiahrt" amendment?

The Tiahrt amendment directs that in family planning ("FP") projects:

- service providers and referral agents cannot implement or be subject to quotas relating to numbers of births, FP acceptors, or acceptors of a particular FP method;
- there be no incentives to individuals in exchange for becoming acceptors or to program personnel for achieving targets or quotas for numbers of births, acceptors, or acceptors of a particular FP method;
- rights or benefits not be withheld from persons who decide not to become acceptors;
- acceptors get comprehensible information on health benefits and risks of the FP method chosen, including conditions that might make the method chosen inadvisable and known adverse side effects;
- provision of experimental FP methods occur in the context of a scientific study in which participants are advised of potential risks and benefits; and

- certain reports on violations be sent to the Congress.

A "FAMILY PLANNING PROJECT"

2. What kinds of projects are covered by the Tiahrt clause?

Tiahrt requirements apply to service delivery projects (discrete, self-contained family planning activities that deal directly with "acceptors" -- people) to which USAID provides assistance (funds, goods, or services). These projects would include, for example, publicly operated clinics, mobile outreach/seasonal clinics, commercial or private clinics and community based door-to-door services when USAID provides support for any of these projects.

The Tiahrt requirements do not apply to USAID assistance for other kinds of population activities – such as a broad information campaign, surveys and data collection, strategic planning, evaluation, biomedical and social science research and publications -- that are not conducted by or for the direct benefit of a specific FP service delivery project.

The Tiahrt clause focuses on the service delivery component, or "project", conducted by an organization that may receive assistance. If no USAID assistance is provided to the service delivery project(s) implemented by an organization, USAID may provide support to other components of an organization's program or other activities conducted by an organization without reviewing how its service delivery projects are implemented.

The Tiahrt requirements apply only to an organization's family planning service delivery projects for which USAID provides assistance. USAID is not responsible for an organization's family planning service delivery projects that are financed by other sources of funds.

Tiahrt applies when any kind of development assistance is provided for FP service delivery projects (such as improving the project's management capability and not just service delivery support), regardless of whether the assistance is in the form of cash, technical assistance, commodities, or training.

3. Does Tiahrt apply to health-funded activities that may involve condom distribution, for example?

No. Tiahrt applies to population assistance from the Development Assistance appropriation account ("DA") and not to activities for which support is provided from the Child Survival and Diseases ("CSD") account.

4. Are DA-funded FP training activities at the clinic level or service delivery level subject to Tiahrt? If so, how is Tiahrt applied?

Training is a form of assistance that may be provided to personnel of a clinic or organization which implements a voluntary family planning project. If USAID-funded training is conducted for personnel at a service delivery project, the project must comply with the Tiahrt requirements. Likewise, a service delivery project must comply with these requirements if USAID provides funding for project personnel who are sent for training programs that are conducted elsewhere.

5. What about assistance used to pay for the costs of running a worldwide FP conference on new

methods of barrier contraception, where USAID funds are not used to cover the direct costs of participants?

This activity, like a mass media campaign, is not a project as defined in the Tiahrt clause: a "discrete, self contained activity through which a[n] ... organization provides family planning services to people"

6. What about USAID assistance to the worldwide conference, above, in the form of funding the travel and per diem costs of participants?

USAID funding for participation in short-term, widely attended training conferences or programs will not require review of a service delivery project or projects for compliance with Tiahrt requirements even though USAID funds might be used to pay travel and per diem costs of participants or trainees who may be personnel of service delivery projects. The assistance that may be provided to service delivery projects by financing travel and per diem of project personnel is minimal compared to the administrative burden of reviewing whether participants at the short-term, widely attended conference or training program include personnel of service delivery projects that have agreed to comply with the Tiahrt requirements. If participants are from service delivery projects to which USAID provides other assistance, the organization implementing the service delivery project from which the participants are sent would already have agreed to comply with the Tiahrt requirements to receive the other USAID-funded development assistance.

7. Does Tiahrt apply to assistance for service delivery projects in the form of activities that merely distribute FP commodities in bulk to organizations or health ministries?

Yes. The project that receives and distributes commodities must agree to the standard Tiahrt provision. If there is no formal subagreement with a project because it receives only commodities, the project must agree to comply with Tiahrt requirements, while using the commodities, before the commodities are provided to it.

8. Can USAID provide health assistance for a hospital to control the spread of infectious disease without requiring that the hospital comply with Tiahrt requirements in its FP service delivery activities whether or not the hospital's FP clinic complies with Tiahrt?

USAID can provide health assistance with funds from the appropriation for the Child Survival and Disease Programs Fund without reviewing whether the hospital's family planning project complies with Tiahrt.

9. Does Tiahrt apply to mass media IE&C projects? Does it apply to information campaigns?

Tiahrt applies to a service delivery project for which USAID provides DA, including support for a mass media campaign that is conducted as part of the service delivery project. If the service delivery project includes a USAID-supported mass media campaign, the organization implementing the service delivery project must agree to comply with the requirements in the Tiahrt clause.

If an organization, like a ministry of health or large private organization, operates clinics that deliver services to people, projects implemented by the clinics to which USAID provides assistance must comply with the Tiahrt clause. If a clinic operates a public information campaign, with USAID support, the project conducted at the clinic must comply with the Tiahrt clause.

Tiahrt does not apply to mass media campaigns conducted by organizations, or distinct units of an organization, that do not implement service delivery projects. If USAID does not provide assistance for clinics, support provided to a ministry of health, for example, to implement a general mass media campaign would not trigger the requirements of the Tiahrt clause for clinics that might be operated under the general direction of the ministry of health.

If an organization which operates clinics also conducts a general mass media public information campaign that does not promote or otherwise relate to its specific clinics, USAID support for the campaign will not require that the service delivery clinics comply with the Tiahrt clause.

(The same principles apply to assistance for other kinds of activities such as policy planning, logistics planning, surveys, and information systems that help determine planning and budgeting indicators or estimates, including the estimated number of new users and by method.)

10. What about activities that do not involve FP service delivery specifically but rather involve TA to clinics on how to conduct surveys, how to keep books and records, etc., that enhance their ability to provide FP services?

If the clinic conducts a family planning project, i.e. provides family planning services to people, the clinic must agree to comply with Tiahrt requirements before any kind of USAID assistance from the Development Assistance account may be provided to the project, including TA for surveys or to improve its management capability.

11. How does Tiahrt apply to social marketing programs through commercial or private companies?

The family planning project subject to Tiahrt requirements is at the retail level where contraceptives and related services are sold to people. The Tiahrt clause does not apply above this level, such as to assistance that may be provided to a manufacturer, wholesaler or distributor.

QUOTAS, OR OTHER NUMERICAL TARGETS ON THE NUMBER OF BIRTHS, FP ACCEPTORS, OR ACCEPTORS OF A PARTICULAR METHOD OF FP

12. What is a "quota" or "target" for purposes of the Tiahrt clause?

A quota or target is a predetermined number of births, FP acceptors, or acceptors of a particular method that a service provider or referral agent is assigned or required to affect or achieve.

13. Does Tiahrt prohibit all targets or quotas that relate to the number of births, acceptors or acceptors of a particular method?

No. Tiahrt applies to "service providers" and "referral agents" in a service delivery project to which USAID provides assistance, and they cannot be subject to or required to implement these kinds of targets or quotas. Furthermore, the clause exempts indicators and goals used for planning, budgeting, and reporting.

14. What if a manufacturer sets sales targets for a contraceptive method (such as for IUDs), and distributors and retailers also have their own sales targets? Is this prohibited?

Manufacturers and distributors do not conduct family planning projects as defined in the clause, and the Tiahrt requirements are not applicable to them. Retailers, such as pharmacies, do provide family planning services to people and conduct "projects" covered by the Tiahrt clause. Sales targets would not violate the requirements, unless they are imposed on the retailer's employees (service providers) and do not reflect normal commercial practices, but rather are designed to achieve or affect a predetermined number of births, acceptors, or acceptors of a particular method of FP.

15. Who is a "service provider and "referral agent" under the Tiahrt clause?

These are people who implement the service delivery project and who deal directly with acceptors or clients.

16. Are USAID performance-based grants, contracts and cooperative agreements that focus on numbers of births, acceptors, or methods permitted under Tiahrt? What if a USAID contractor or recipient in turn uses performance-based agreements with other organizations that receive USAID assistance?

The restriction on "targets and quotas" in the Tiahrt clause applies to personnel who work in the project as service providers and referral agents. The Tiahrt clause would be violated if service providers or referral agents implement or are made subject to targets or quotas on the number of births, acceptors or acceptors of a particular method as a result of provisions in performance-based grants, contracts or cooperative agreements.

17. Would it be inconsistent with the Tiahrt clause to have other provisions in USAID agreements, or subagreements for which USAID provides support, that call for monitoring and evaluation plans, or require reporting, by a service delivery project on the basis of the number of births affected, number of acceptors, or number of acceptors of a particular method?

USAID and cooperating partners may use this kind of information in reports or monitoring and evaluation plans for planning and budgeting purposes, such as whether to increase support for a project to make more services available, or to replenish resources spent, or to expand a project's scope. These indicators or estimates are not inconsistent with the Tiahrt clause and would not lead to a violation, unless the project treats these indicators or estimates as quotas or targets to which the project's service providers or referral agents are subject.

"INCENTIVES, BRIBES, GRATUITIES, OR FINANCIAL REWARD"

18. Is the Tiahrt restriction on incentives and bribes, etc., applicable only to service providers and referral agents, as is the case for targets and quotas?

The restriction applies to "program personnel" which is a broader term than service providers and referral agents. The focus still is on service delivery projects, but this restriction applies as well to persons who manage or perform other functions for an organization that implements a service delivery project.

19. Does the Tiahrt incentive restriction bar payment on a per case or method basis?

The clause specifically addresses the situation where payments or salaries increase on a per case or method

basis. There can be legitimate reasons for being paid more for a greater number of acceptors of a specific FP method because it requires more work or skill. The restriction in the clause applies only when the payment is based on achieving a quota or target expressed as a "predetermined number".

20. Are items provided to project personnel, such as caps, work aprons, mugs, backpacks, incentives that would be barred under the Tiahrt clause.

No. The Tiahrt clause restricts the payment of incentives, bribes, gratuities or financial rewards to project personnel in exchange for achieving a numerical quota or target of total number of births, acceptors, or acceptors of a particular method. It does not bar nonfinancial, small-value items that are provided across the board to project personnel or to individuals to acknowledge general good performance. This is neither a "payment" nor reward for achieving a predetermined number of births, acceptors, or acceptors of a particular method. This clause also would not be violated by providing special training opportunities or promotions for project personnel who are considered good performers. Any organization will provide training opportunities and promotion to leadership positions for personnel who are doing their jobs well.

21. Does the Tiahrt incentive restriction prohibit sales commissions or bulk discounts for sales representatives that vary as the volume of sales increase?

This clause does not prohibit commissions paid to sales representatives of distributors or wholesalers in private sector social marketing programs because they are not part of the "service delivery project" which is at the retail level. The potential for abuse also does not seem to exist at those higher levels in the distribution chain both because these sales representatives do not deal with acceptors/people and also their commissions may be increased by finding more retail outlets.

22. What if these pricing incentives are passed on to commercial retailers such as pharmacies? What if passed on to FP acceptors?

Price incentives to retailers based on normal commercial practice do not violate the Tiahrt clause. Even if the price incentives are passed on to acceptors, making it less expensive for them to buy a particular method (like an IUD) or more units of a method (like oral contraceptives) than otherwise might be the case, there is no violation of the Tiahrt incentives clause. Tiahrt would not prohibit the free distribution of any method and, likewise, would not prohibit its sale to acceptors who choose to purchase the method at a price discounted in accordance with normal commercial practices. In addition, the restriction is on "payment of incentives, bribes, gratuities or financial reward" to a person in exchange for being a family planning acceptor. There is no "payment" in exchange for being an acceptor involved in passing on price incentives to consumers.

"COMPREHENSIBLE INFORMATION" REQUIREMENT

23. Must the "health benefits and risks" be specified for all methods of FP or only the particular method being supplied?

Tiahrt requires information about the health benefits and risks, including conditions that might make the method chosen inadvisable and known adverse side effects, for the specific FP method being provided to an acceptor. Information on other alternative methods is not required by Tiahrt. However, standard

provisions require FP service delivery projects to provide a broad range of FP methods and services available in the country or information on where such methods and services may be obtained.

24. How is the information requirement to be met?

This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through a variety of ways, including, but not limited to, counselling, posters, brochures or package inserts.

RESEARCH REQUIREMENTS

25. What is necessary for a project to satisfy the requirement regarding "experimental contraceptive drugs and devices?"

USAID has issued regulations regarding research on human subjects (22 CFR 225). These regulations are included in all grants, contracts, and cooperative agreements that support research on human subjects, and support for any research on such experimental methods must be carried out in accordance with these regulations.

ENFORCEMENT AND APPLICATION OF TIAHRT

26. What must be done if there is an allegation of a violation of the Tiahrt clause in a project?

Allegations about violations of Tiahrt requirements may come from a variety of sources and may be made to USAID overseas or even in Washington as well as to USAID-funded implementing agencies. If allegations are made to USAID, the Agency will decide how they will be reviewed.

The Tiahrt clause requires grantees, contractors, and recipients of cooperative agreements to notify USAID when they learn about an alleged violation of the restrictions on quotas, incentives, withholding benefits, and experimental activities. They also should take corrective action. USAID must report to Congress if there is any violation of these restrictions.

USAID must report to Congress when there is a pattern or practice in a project of violating the requirement to provide comprehensible information about the health benefits and risks of a method chosen by an acceptor. Deciding when there is a "pattern or practice" that would trigger a report to Congress is a judgment USAID must make -- not grantees or contractors. The clause, therefore, requires grantees and contractors to investigate and take appropriate remedial action whenever they learn about alleged violations of the requirement to provide comprehensible information. USAID should be notified about violations in a project affecting a number of people over a period of time that would raise concern about whether there is a systemic problem in the project. USAID expects grantees, contractors, and recipients to maintain records about alleged violations and corrective action taken, which shall be made available to USAID on request, and to exercise reasonable judgment in reporting these violations to the Agency.

27. If there is an alleged violation, who in USAID should be informed?

Country missions are often in the best position to review the circumstances surrounding allegations of violations. CTOs and PHN officers in the missions should be informed first. Where there is no mission,

the CTO in Washington should be informed. CTOs and PHN officers should inform G/PHN/POP and regional bureaus and provide further documentation that may be requested from the implementing partners on what the alleged violation is, what verification has been made, and what corrective actions have been taken or planned.

TIAHRT LANGUAGE IN AGREEMENTS AND SUBAGREEMENTS

28. If a Mission has a Strategic Objective Agreement (SOAG) or other bilateral agreement with a host country that involves FP activities, should/must the agreement embody Tiahrt requirements?

The requirements of the Tiahrt amendment must be implemented effectively in bilateral family planning activities with foreign governments. Field posts may decide whether to include the Tiahrt clause in the bilateral agreement or implementing agreements or both as long as the requirements are applicable to all family planning service delivery projects for which USAID provides assistance under the DA account.

29. USAID uses grants, contracts and cooperative agreements with intermediaries to carry out FP activities and the intermediaries, in turn, often use successive layers of intermediaries. How is it anticipated that the Tiahrt requirements will be passed down the line to the projects that provide family planning services to people?

USAID grants, contracts and cooperative agreements for FP projects contain a standard provision which requires that the same population requirements, including the Tiahrt requirements, appear in subagreements. Each subagreement will require the next level of intermediaries to include the same population provision (with Tiahrt requirements), and so on.

30. What if notwithstanding the language in USAID grants and contracts, certain subagreements fail to contain the Tiahrt requirements?

If an intermediary, contrary to its agreement with an upstream entity, fails to include the Tiahrt requirements in a downstream subagreement, this lapse could amount to a breach of its agreement, but it will not automatically lead to a Tiahrt violation.

31. What if assistance is passed down to a service delivery project level without written subagreements such as when a grantee or contractor provides TA or commodities to a project without establishing the kind of long-term relationship for which a subagreement would be appropriate? Will USAID require the use of subagreements containing Tiahrt language where this is not a standard practice?

USAID does not require the use of subagreements in all cases. Where subagreements are not generally used, the grantee or contractor must obtain the recipient organization's agreement to comply with the Tiahrt requirements while receiving the TA or using the commodities.