



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 66

July 14, 2008

# **S. 2731 – Tom Lantos and Henry J. Hyde United States Global Leadership against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008**

Calendar No. 698

*S. 2731 was reported by the Foreign Relations Committee on April 15, 2008 by a vote of 18-3; S-Rept. 110-325, with Minority views filed.*

### **Noteworthy**

- On Friday, July 11, the Senate invoked cloture on the motion to proceed to S. 2731 by a vote of 65-3. Pursuant to a unanimous consent agreement, the Senate will begin consideration of the bill at 3:00 p.m. Monday, and a Biden/Lugar substitute amendment will be offered and accepted as original text for the purpose of amendment. A limited number of amendments are also in order.
- According to the Committee Report, S. 2731 authorizes the appropriation of \$50 billion for programs to combat HIV/AIDS, tuberculosis, and malaria for FYs 2009-2013. The authorization will provide \$41 billion for bilateral HIV/AIDS programs and the Global Fund, \$5 billion for malaria programs, and \$4 billion for tuberculosis programs. Annual spending limits are not assigned.
- The Congressional Budget Office (CBO) estimates that S. 2731 would cost \$35 billion over the FY 2009-2013 period, because it would take time for the programs to increase spending to meet the authorized spending levels. Additionally, a 302(f) budget point of order lies against the bill because it exceeds the Foreign Relations Committee's 302(a) allocation by \$3 million over FYs 2009-13.
- The Statement of Administration Policy (SAP) for S. 2731 indicates that the Administration "strongly supports" the legislation.
- H.R. 5501, the companion House legislation, passed the House by a vote of 308-116 on April 2, 2008.

---

## **Background**

---

In 2003, President Bush proposed that the United States spend \$15 billion over five years to prevent and treat HIV/AIDS internationally. The initiative, the President's Emergency Plan for AIDS Relief (PEPFAR), was funded through the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (The Leadership Act).<sup>1</sup> The legislation included funds for the treatment and prevention of HIV/AIDS in selected countries in Sub-Saharan Africa, Asia, and the Caribbean, and also included funds for the treatment of malaria and tuberculosis (TB).

The U.S. is a key part of the global response to HIV/AIDS, contributing the highest dollar amount among bilateral donors to prevent and treat the disease. According to PEPFAR's website, the program has supported life-saving antiretroviral treatment for approximately 1.73 million men, women, and children.<sup>2</sup> Additionally, support from U.S. programs has helped ensure that 150,000 infants who likely would have been infected with HIV in utero or during birth did not become infected. Estimates indicate that 33.2 million people are living with HIV, 2.5 million became infected last year, and 2.1 million died of AIDS-related causes.<sup>3</sup> Sub-Saharan Africa continues to be the most impacted region, with over two-thirds of the global population of HIV-infected individuals and three-quarters of AIDS-related deaths last year. Tuberculosis and malaria also claim over 2.6 million lives per year.<sup>4</sup>

In May of 2007, the President requested that Congress authorize \$30 billion to fund PEPFAR an additional five years. This proposal would have doubled the United States' initial \$15 billion commitment made in 2003. The President estimated this would provide treatment for 2.5 million people, prevent more than 12 million new infections, and care for more than 12 million people, including 5 million orphans and vulnerable children. S. 2731 calls for a 5-year strategy on global HIV/AIDS to achieve or exceed these goals.

Congress has appropriated more than the original \$15 billion commitment—\$19.7 billion—which includes contributions to the U.S. Agency for International Development (USAID) and the Centers for Disease Control's (CDC) tuberculosis and malaria programs, as well as funding for the Global Fund to fight AIDS, Tuberculosis and Malaria (the Global Fund).<sup>5</sup> In fiscal year (FY) 2007, the U.S. federal funding commitment for global HIV/AIDS, as part of PEPFAR, totaled \$5.7 billion,<sup>6</sup> including funding for prevention, care, treatment, research, and the Global Fund. The current funding level of PEPFAR (including malaria and tuberculosis programs) is \$6.3 billion per year.<sup>7</sup> Most PEPFAR funding supports bilateral programs in PEPFAR's 15 focus

---

<sup>1</sup> P.L.108-35.

<sup>2</sup> www.PEPFAR.gov.

<sup>3</sup> Committee Report 110-325.

<sup>4</sup> Committee Report 110-325.

<sup>5</sup> The Global Fund is an independent, public-private, multilateral institution which finances HIV/AIDS, TB, and malaria programs in low and middle income countries. The Global Fund now provides grants in 138 countries. The United States is the leading contributor to the Global Fund.

<sup>6</sup> CRS Report to Congress, "Trends in U.S. Global AIDS Spending: FY2000-FY2008," April 10, 2008 (RL33771).

<sup>7</sup> CRS Report to Congress, "Trends in U.S. Global AIDS Spending: FY2000-FY2008," April 10, 2008 (RL33771).

countries.<sup>8</sup> The authorization will provide \$41 billion for bilateral HIV/AIDS programs and the Global Fund, \$5 billion for malaria programs, and \$4 billion for tuberculosis programs.<sup>9</sup>

**U.S. Spending on Global HIV/AIDS, TB, and Malaria: FY2004-FY2008**  
(\$ millions, current)

Program	FY2004 Actual	FY2005 Actual	FY2006 Actual	FY2007 CR	FY2008		FY2004- FY2008 TOTAL
					Request	Estimate	
1. USAID HIV/AIDS (excluding Global Fund)	555.0	384.7	373.8	342.6	346.3	371.1	2,027.2
2. USAID Tuberculosis	85.0	91.9	91.5	91.5	89.9	162.2	522.1
3. USAID Malaria <sup>a</sup>	80.0	90.8	102.0	250.9	387.5	347.2	870.9
4. USAID Global Fund Contribution	397.6	248.0	247.5	247.5	0.0	0.0	1,140.6
5. FY2004 Global Fund Carryover <sup>b</sup>	(87.8)	87.8	n/a	n/a	n/a	n/a	0.0
6. State Department GHAI	488.1	1,373.5	1,777.0	2,869.0	4,150.0	4,116.0	10,623.6
7. GHAI Global Fund Contribution	0.0	0.0	198.0	377.5	0.0	545.5	1,121.0
8. Foreign Military Financing <sup>c</sup>	1.5	1.9	1.9	1.6	0.0	—	6.9
<b>9. Subtotal, Foreign Operations Appropriations</b>	<b>1,519.4</b>	<b>2,278.6</b>	<b>2,791.7</b>	<b>4,180.6</b>	<b>4,973.7</b>	<b>5,542.0</b>	<b>16,312.3</b>
10. CDC Global AIDS Program <sup>d</sup>	291.6	123.8	122.7	120.9	121.2	118.9	777.9
11. CDC Tuberculosis	2.0	2.0	0.0	0.0	0.0	0.0	4.0
12. CDC Malaria	9.0	9.0	9.0	0.0	0.0	0.0	27.0
13. CDC International Research	9.0	14.0	0.0	0.0	0.0	0.0	23.0
14. NIH International Research <sup>e</sup>	317.2	370.0	373.0	372.0	373.0	363.6	1,795.8
15. NIH Global Fund contribution	149.1	99.2	99.0	99.0	300.0	294.8	741.1
16. DOL AIDS in the Workplace Initiative	9.9	1.9	0.0	0.0	0.0	0.0	11.8
<b>17. Subtotal, Labor/HHS Appropriations</b>	<b>787.8</b>	<b>619.9</b>	<b>603.7</b>	<b>591.9</b>	<b>794.2</b>	<b>777.3</b>	<b>3,380.6</b>
18. DOD HIV/AIDS prevention education	4.3	7.5	5.2	0.0	0.0	8.0	25.0
<b>19. Total HIV/AIDS and Global Fund</b>	<b>2,135.5</b>	<b>2712.3</b>	<b>3,198.1</b>	<b>4,430.1</b>	<b>5,290.5</b>	<b>5,817.9</b>	<b>18,293.9</b>
<b>20. GRAND TOTAL</b>	<b>2,311.5</b>	<b>2,906.0</b>	<b>3,400.6</b>	<b>4,772.5</b>	<b>5,767.9</b>	<b>6,327.3</b>	<b>19,717.9</b>

CRS Report, "Trends in U.S. Global AIDS Spending: FY2000-FY2008," April 10, 2008.<sup>10</sup>

<sup>8</sup> PEPFAR targets most (58 percent) of its funding in 15 Focus Countries, which account for over 50 percent of all HIV-infected people. The 15 Focus Countries are Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, and Zambia. All of these, except Vietnam, were designated as Focus Countries by P.L. 108-35. CRS Report to Congress, "International HIV/AIDS, Tuberculosis and Malaria: Key Changes to U.S. Programs and Funding," July 11, 2008 (RL34569).

<sup>9</sup> Pursuant to the FY 2009 budget request for global HIV/AIDS, 78 percent of funding would go to PEPFAR, an additional 14 percent would go to bilateral efforts in other countries, and the remaining 8 percent would be designated for contributions to the Global Fund.

<sup>10</sup> Please refer to the report for footnotes, found on page 10; the report is available at <http://www.congress.gov/erp/rl/pdf/RL33771.pdf>.

---

## Key Provisions

---

Spending: The bill authorizes \$50 billion in spending over five years, which is \$20 billion above the amount requested by the President. The authorization will provide \$41 billion for bilateral HIV/AIDS programs and the Global Fund, \$5 billion for malaria programs, and \$4 billion for tuberculosis programs. Annual spending limits are not assigned.<sup>11</sup> The current funding level of PEPFAR, including malaria and tuberculosis efforts, is \$6.3 billion per year.<sup>12</sup>

Prevention and Treatment Targets: S. 2731 sets a target of preventing 12 million new HIV infections. The bill has a sliding scale for treatment so that the target may rise above 2 million. As the cost of treatment goes down, the goal for treatment will be increased proportionately to ensure that funds are used in an efficient manner. The bill also supports care for more than 12 million people, including 5 million orphans and vulnerable children. Additionally, the bill aims to achieve 80 percent access to counseling, testing, and treatment to prevent the transmission of HIV from mother to child.

Removal of Ban on HIV-Positive Aliens: S. 2731 removes language that makes individuals with HIV ineligible for visas or admission to the United States. The Centers for Disease Control will still have discretion to maintain the ban as a communicable disease of public-health significance, but the CDC is expected to amend their regulations if the legislative prohibition is removed.<sup>13</sup> These aliens could then potentially be eligible for federal disability, health, and nutrition benefits. CBO estimates that 4,300 immigrants with HIV/AIDS would enter the US annually by 2013. In total, CBO estimates that providing benefits to those immigrants and their children would increase spending by \$3 million from 2010-2013 and \$83 million over the 2010-2018 period. The bill pays for this spending with a small increase in visa fees. The Congressional Research Service (CRS) issued an analysis of this provision, which concluded that the ban would not “entitle foreign nationals with HIV/AIDS to receive visas to enter the United States.”<sup>14</sup> The House-passed bill, H.R. 5501, does not contain this provision.

Requirement for Funding of Treatment: In the Leadership Act, Congress directed that not less than 55 percent of HIV/AIDS funds be spent on treatment. S. 2731 provides that “more than half” the amount appropriated for bilateral AIDS funding be spent on forms of treatment for people with HIV/AIDS, including antiretroviral treatment, care for related infections, and nutrition. The bill also establishes a formula to set a goal for the number of people who will be treated relative to the amount appropriated under the legislation. In addition, as the cost of treatment goes down, the goal for treatment will be increased proportionately to ensure that funds are used in an efficient manner.

Compacts with Other Countries: The legislation allows compacts with low-income countries and regions with a high prevalence of HIV/AIDS, and with countries that have “inadequate financial means” where the host country makes a “significant investment” and Congress approves.

---

<sup>11</sup> The Committee Report says this is done “to allow for these programs to be increased over time as services are expanded and to accommodate absorptive capacities.” Committee Report 110-325.

<sup>12</sup> CRS Report to Congress, “Trends in U.S. Global AIDS Spending: FY2000-FY2008,” April 10, 2008 (RL33771).

<sup>13</sup> See Congressional Budget Office Estimate of S. 2731, April 11, 2008.

<sup>14</sup> CRS memo, “U.S. Immigration Policy on Foreign Nationals with HIV/AIDS,” July 11, 2008.

Priority is given to countries that are included in regional funds and programs in existence at the date of enactment of the legislation. Under current law, PEPFAR funds are spent in Central Asia, Eastern Europe, and Latin America.

Global Fund: For FY 2009, the bill authorizes up to \$2 billion for the Global Fund to Fight AIDS, Tuberculosis, and Malaria, and such sums as necessary for FYs 2010-2014. The bill includes benchmarks for accountability and transparency and a provision to withhold 20 percent of the appropriated funds if these benchmarks are not met. Additionally, it includes a Sense of the Congress that the Global Fund should provide additional resources to the Office of Inspector General of the Global Fund, and that the Global Fund should better track funding.

Increased Emphasis on Women and Nutrition: The bill includes an increased focus on women and girls, emphasizes the importance of reducing gender violence, and supports additional nutritional programs that work in coordination with treatment.

Family Planning and Prevention Programs: S. 2731 states that reducing HIV/AIDS includes prioritizing abstinence, increasing the availability of male and female condoms, and reducing the number of sexual partners, as well as addressing drug abuse and reducing violent behavior towards women and girls. The bill requires a “balanced” approach to the prevention of the sexual transmission of HIV. It further requires that the Global AIDS Coordinator “ensure that activities promoting abstinence, delay of sexual debut, monogamy, fidelity, and partner reduction are implemented and funded in a meaningful and equitable way.” The bill does not specifically address the issue of family planning or the “prostitution pledge” in current law. This pledge is the subject of ongoing litigation.

Microbicides: The legislation includes a provision to encourage research on methods for women to prevent sexual transmission of HIV, which may include microbicides. A recent clinical trial of microbicides had to be cancelled because it was determined the microbicides were ineffective in preventing the transmission of HIV and, in fact, may have led to an increase in HIV infection rates.<sup>15</sup>

Drug Purchasing: The bill requires that drugs purchased through authorized programs be approved, tentatively approved, or otherwise authorized for use by the Food and Drug Administration (FDA), a regulatory agency acceptable to the Department of Health and Human Services (HHS), or a quality assurance mechanism acceptable to the Secretary of HHS.

Related Care: S. 2731 provides for activities to ameliorate the adverse social and economic costs often affecting AIDS-impacted families and communities, including nutritional and food support, safe drinking water and sanitation, nutritional counseling, and “income-generating activities and livelihood initiatives.” It also supports the sustainability of health care systems in affected countries.

Global Malaria Coordinator: S. 2731 establishes a Coordinator of United States Government Activities to Combat Malaria Globally (Global Malaria Coordinator) at USAID. The Global

---

<sup>15</sup> <http://www.sciencedaily.com/releases/2007/02/070201235814.htm>

AIDS Coordinator will oversee and coordinate all U.S. resources for international activities related to combating malaria.

---

## **Cost**

---

S. 2731 authorizes the appropriation of \$50 billion for programs to combat HIV/AIDS, tuberculosis, and malaria for FYs 2009-2013. The authorization will provide \$41 billion for bilateral HIV/AIDS programs and the Global Fund, \$5 billion for malaria programs, and \$4 billion for tuberculosis programs.<sup>16</sup> Annual spending limits are not assigned.<sup>17</sup>

The Congressional Budget Office (CBO) estimates that S. 2731 would cost \$35 billion over FYs 2009-2013, because it would take time for the programs to increase spending to meet the authorized spending levels. Some dispute this estimate, arguing that there is more absorptive capacity in the programs because they are already being implemented. Additionally, a 302(f) budget point of order lies against the bill because it exceeds the Foreign Relations Committee's 302(a) allocation by \$3 million over FYs 2009-13.<sup>18</sup>

---

## **Administration Position**

---

The Statement of Administration Policy (SAP) for S. 2731 indicates that the Administration “strongly supports” the legislation. The SAP reads, “S. 2731 would reauthorize the Emergency Plan in a manner consistent with the program’s successful founding principles and would maintain a continued focus on quantifiable HIV/AIDS prevention, treatment, and care goals. ... The Administration notes that the bill would authorize \$50 billion for HIV/AIDS, tuberculosis, and malaria over five years—an amount significantly above the Administration’s \$30 billion proposal. We are concerned about this increase, and we look forward to working with the appropriators to further analyze program needs so that we can maximize PEPFAR’s effectiveness through greater efficiencies and proven strategies. The Administration strongly supports this legislation and looks forward to working with the Congress to ensure reauthorization of PEPFAR.”

---

<sup>16</sup> Committee Report 110-325.

<sup>17</sup> The Committee Report says this is done “to allow for these programs to be increased over time as services are expanded and to accommodate absorptive capacities.” Committee Report 110-325.

<sup>18</sup> The increased spending is related to the cost of removing the ban on HIV-positive aliens, as described in this Notice.

## Amendments

Pursuant to a unanimous consent agreement, there will be 10 Republican amendments in order, with relevant second-degree amendments in order. The 10 Republican amendments are:

- Gregg (Inspector General for Global Aids Office);
- Gregg (cost-share agreements);
- DeMint (\$35 billion spending authorization);
- DeMint (extraneous spending prohibition);
- Cornyn (sunset provision);
- Bunning (reauthorization of current law);
- Kyl (last year's authorization to be \$10 billion);
- Vitter (Inspector General for contributions to Global Fund);
- Sessions (strike lifting ban on visas for individuals with HIV/AIDS; 60 votes required to pass);
- Thune /Kyl (Indian law enforcement/safe drinking water; 60 votes required to pass).