

# USAID

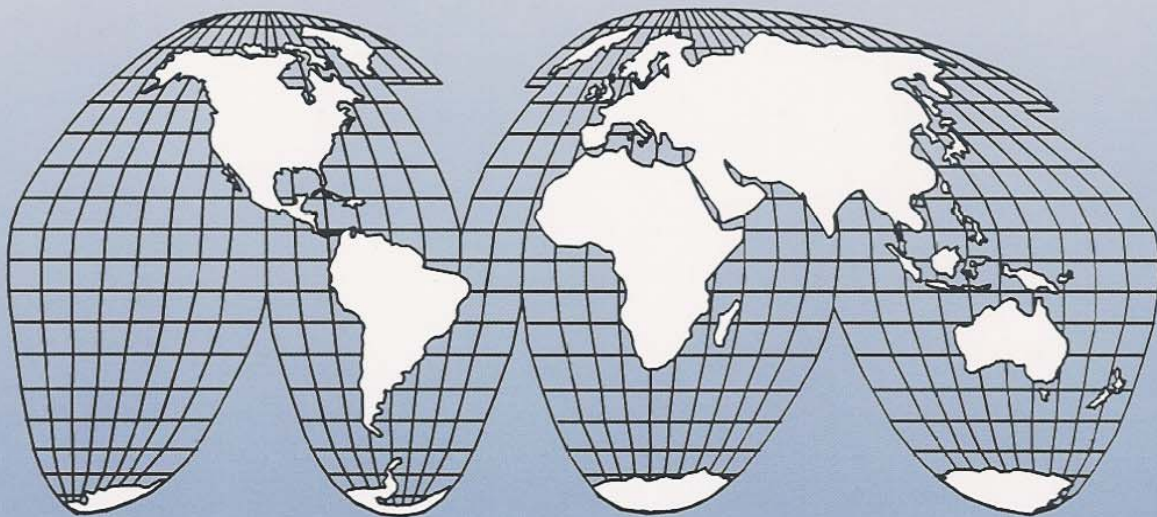
## OFFICE OF INSPECTOR GENERAL

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### **Audit of USAID/Bangladesh's Nongovernmental Organization (NGO) Service Delivery Program**

**Audit Report No. 5-388-05-004-P**

**March 31, 2005**



**Manila, Philippines**



March 31, 2005

## MEMORANDUM

**FOR:** USAID/Bangladesh Director, Gene V. George

**FROM:** Regional Inspector General/Manila, John M. Phee /s/

**SUBJECT:** Audit of USAID/Bangladesh's Nongovernmental Organization (NGO) Service Delivery Program (Report No. 5-388-05-004-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments to the draft report and included your comments on our recommendations and your overall comments on the body of the report (without the detailed line-by-line proposed changes to the draft report) as Appendix II.

This report contains four recommendations to improve the Nongovernmental Organization (NGO) Service Delivery Program. Based on our review of your comments to the draft report, we consider that final actions have been taken on Recommendation Nos. 1, 2, and 3, and these recommendations are closed upon issuance of this report. For Recommendation No. 4, a management decision has been made but final action is pending. USAID/Bangladesh should coordinate final action on Recommendation No. 4 with the Bureau for Management's Office of Management Planning and Innovation.

I want to thank you and your staff for the cooperation and courtesy extended to us during the audit.

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**Table of Contents**

Summary of Results..... 5

Background..... 6

Audit Objectives ..... 7

Audit Findings ..... 7

    Are there incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment on the part of Pathfinder International and its subgrantees?..... 7

        Incidents Of Possible Noncompliance With The Mexico City Policy And The Helms Amendment..... 8

    What actions have USAID/Bangladesh and Pathfinder International taken to investigate incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment and prevent future incidents of noncompliance?..... 14

Evaluation of Management Comments ..... 16

Appendix I – Scope and Methodology ..... 19

Appendix II - Management Comments ..... 21

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## Summary of Results

At the request of USAID/Bangladesh, the Regional Inspector General/Manila conducted this audit to determine whether there are incidents of possible noncompliance with the Mexico City Policy (MCP) and the Helms Amendment (Helms) on the part of Pathfinder International (Pathfinder) and its subgrantees, and to determine what actions USAID/Bangladesh and Pathfinder have taken to investigate incidents of possible noncompliance with the MCP and Helms and to prevent future incidents of noncompliance (page 7).

We identified 3,367 incidents of possible noncompliance with the MCP or Helms at 7 of the 41 subgrantees receiving USAID funds through Pathfinder.<sup>1</sup> These incidents involved the provision of menstrual regulation services or the referral of patients to other facilities for such services. (Under the MCP, organizations receiving funds from USAID should not perform or refer patients for menstrual regulation—an abortion procedure—except in certain cases such as rape or incest.) Pathfinder suspended all USAID funding to five subgrantees and restricted USAID funding to the remaining two subgrantees until it has completed a review of all seven to determine whether they had complied with the MCP and Helms, and USAID has reviewed Pathfinder’s determination (pages 7, 8, and 9).

After our audit field work ended, Pathfinder notified us that it had confirmed that 2 of the 3,367 incidents did involve noncompliance with the MCP or Helms. As a result, Pathfinder was taking action to terminate its agreements with the two subgrantees, and it recovered \$224,592 from them (page 8).

Both USAID/Bangladesh and Pathfinder took timely actions to investigate the incidents of possible noncompliance with the MCP or Helms and to prevent future incidents of noncompliance. Pathfinder is in the process of visiting all clinics operated by its subgrantees and providing training on restrictions related to the MCP and Helms, as well as other statutory restrictions on USAID funds used for family planning activities (page 14).

This report makes three recommendations to help USAID/Bangladesh and Pathfinder strengthen controls to prevent future noncompliance with the MCP or Helms (pages 13 and 14). It also makes a fourth recommendation that USAID/Bangladesh review Pathfinder’s determination regarding the 3,367 incidents of possible noncompliance with the MCP or Helms, and take any additional actions required by the MCP or Helms (page 14).

Based on the Mission’s comments, final actions have been taken on Recommendation Nos. 1, 2, and 3, and these recommendations are closed upon issuance of this report (page 16). For Recommendation No. 4, a management decision has been made but final action is pending (page 16). The Mission’s comments are in Appendix II to this report (page 21).

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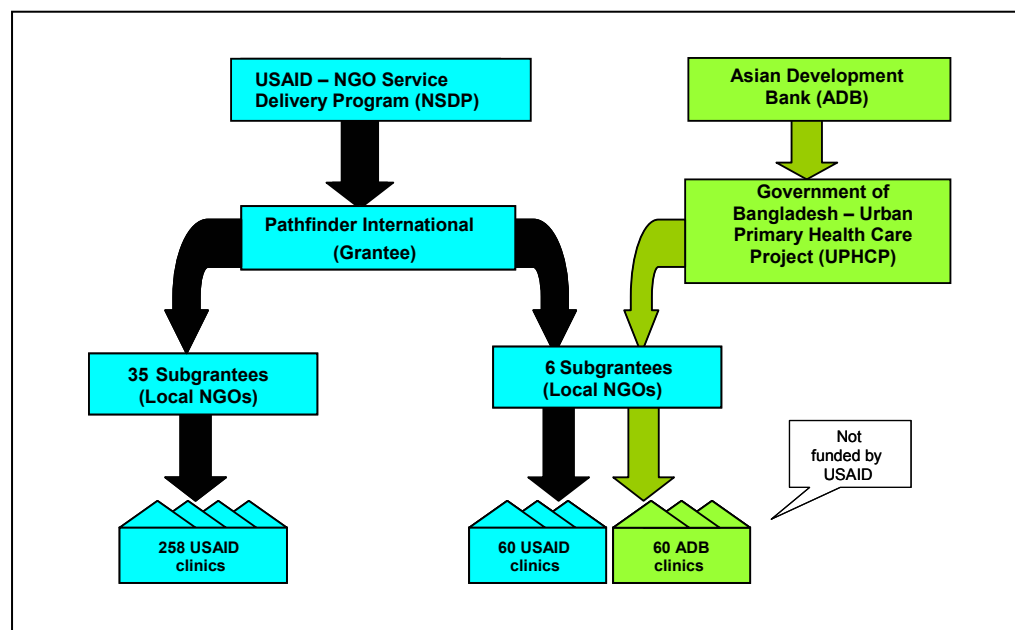
<sup>1</sup> Instead of the awkward “and/or” combination, we used the phrase “the MCP or Helms” throughout the audit report to signify “the MCP or Helms or both”.

## Background

On January 22, 2001, President Bush restored the Mexico City Policy (MCP) that had been in place during 1985-1993. The MCP states that as condition for receiving funds appropriated pursuant to the Foreign Assistance Act for family planning activities, foreign nongovernmental organizations (NGOs) must agree that they will not perform or actively promote abortions as a means of family planning or provide support to the other foreign NGOs that conduct such activities. The Helms Amendment (Helms) prohibits the use of USAID funds to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

In May 2002, USAID/Bangladesh awarded to Pathfinder International (Pathfinder), a U.S.-based nonprofit organization, a \$60 million cooperative agreement, which expires on September 30, 2006, to implement the NGO Service Delivery Program (NSDP). The purpose of the program is to support Bangladeshi NGOs (subgrantees) providing family planning and maternal and child health services to the poor in Bangladesh. The program's subgrantees are subject to Helms, which applies to the use of USAID funds. The subgrantees are also subject to the MCP, which applies to the use of an organization's funds received from all sources (i.e., USAID and non-USAID).

As the NSDP grantee, Pathfinder oversees and supports 41 subgrantees. These subgrantees manage 318 USAID-funded clinics that provide health services to communities throughout the country. Of the 41 subgrantees, 6 also manage 60 clinics primarily funded by the Asian Development Bank (ADB) through a health project run by the Government of Bangladesh. These 60 clinics do not receive any USAID funding. The diagram below shows the organizational relationship (as of November 2004) between USAID's NSDP and the Government of Bangladesh's project, which is primarily funded by the ADB.



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On August 11, 2004, Pathfinder notified USAID/Bangladesh of one incident of possible noncompliance with the MCP or Helms by one of its six subgrantees that also operated ADB-funded clinics. Concerned about the incident, USAID/Bangladesh requested that the OIG determine whether Pathfinder properly informed its subgrantees of the requirements of the MCP and Helms when it awarded subgrants, and whether it followed proper procedures in handling the incident of possible noncompliance.

In response to USAID/Bangladesh's request, the OIG performed a two-week survey in September 2004. The survey found evidence of additional incidents of possible noncompliance with the MCP or Helms and monitoring weaknesses within USAID's NSDP. The survey also found that Pathfinder was investigating the incidents, and that both USAID/Bangladesh and Pathfinder had prepared or were preparing action plans to prevent future noncompliance. Nonetheless, the OIG concluded, based on the survey results, it needed to conduct an audit.

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## **Audit Objectives**

The Regional Inspector General/Manila conducted this audit at the request of USAID/Bangladesh to answer the following questions:

- Are there incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment on the part of Pathfinder International and its subgrantees?
- What actions have USAID/Bangladesh and Pathfinder International taken to investigate incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment and prevent future incidents of noncompliance?

Appendix I contains a discussion of the audit's scope and methodology, including significant limitations on the scope of the audit.

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## **Audit Findings**

### **Are there incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment on the part of Pathfinder International and its subgrantees?**

We identified 3,367 incidents of possible noncompliance with the Mexico City Policy (MCP) or the Helms Amendment (Helms) at 7 of the 41 subgrantees receiving USAID funds through Pathfinder International (Pathfinder).<sup>2</sup> These incidents involved the provision of menstrual regulation services or the referral of patients to other facilities for such services. Pathfinder suspended all USAID funding to five of the subgrantees and restricted USAID funding to the other two subgrantees until it has completed a review of all seven to determine whether they had complied with the MCP and Helms, and USAID has reviewed Pathfinder's

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<sup>2</sup> See Table 1 on page 10.



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determination.<sup>3</sup> After our audit field work ended, Pathfinder notified us that it confirmed that 2 of the 3,367 incidents, which occurred at two of the suspended subgrantees, did involve noncompliance with the MCP or Helms. As a result, Pathfinder was taking action to terminate its agreements with the two subgrantees, and it recovered \$224,592 from them.<sup>4</sup> Pathfinder is still reviewing the other 3,365 incidents of possible noncompliance with the MCP or Helms.

### **Incidents Of Possible Noncompliance With The Mexico City Policy And The Helms Amendment**

Summary: The Mexico City Policy requires foreign subgrantees to certify that they do not perform or actively promote abortion as a method of family planning as a condition for receiving USAID assistance for family planning. The Helms Amendment prohibits the use of funds under the Foreign Assistance Act from being used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. We identified 3,367 incidents of possible noncompliance with the MCP or Helms at 7 of the 41 subgrantees receiving USAID funds through Pathfinder. These incidents involved the provision of menstrual regulation services or the referral of patients to other facilities for such services. Neither USAID/Bangladesh nor Pathfinder adequately monitored subgrantee compliance with the policy and the legislation, contributing to a weak control environment where numerous incidents of possible noncompliance could occur and not be detected. As a result, U.S. abortion-related law and policy concerning abortion may have been violated.

The MCP prohibits Pathfinder, a U.S.-based nonprofit organization, from awarding USAID assistance for family planning activities to any foreign nongovernmental organization that performs or actively promotes abortion as a method of family planning in USAID-recipient countries or that provides financial support to any other foreign nongovernmental organization that conducts such activities. In addition, the MCP provides that, as a condition for receiving USAID assistance for family planning, Pathfinder's subgrantees must certify that they do not provide or actively promote abortion as a method of family planning in USAID recipient countries or provide financial support to any other foreign nongovernmental organizations that conduct such activities. Helms prohibits the use of U.S. foreign assistance funds to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

It is important to note that there are exclusions to the MCP. For example, abortions or referrals for abortions are permitted in cases of rape or incest, or

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<sup>3</sup> Table 1, Subgrantees A, B, C, D, and E had their funding suspended and Subgrantees F and G had their funding restricted.

<sup>4</sup> Table 1, Subgrantees A and B.

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when the life of the mother would be endangered if the fetus was carried to term. Also excluded is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care. Further, passively responding (passive referral) to a question regarding where a safe, legal abortion may be obtained is permitted by the MCP, if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where an abortion may be obtained safely.

Menstrual regulation is a procedure for early termination of pregnancy by withdrawing the uterine lining and a fertilized egg, if present, by means of suction. USAID prohibits using USAID funds to perform menstrual regulation (MR) since the procedure is considered abortion.<sup>5</sup> Since MR is considered abortion, it is subject to the abortion restrictions in both the MCP and Helms.

Although MR is legal in Bangladesh and it is an allowable procedure under the Government of Bangladesh's Urban Primary Health Care Project (UPHCP)—a project funded by the Asian Development Bank—the six Pathfinder subgrantees that also participated in the UPHCP had, as a condition of receiving USAID family planning assistance, agreed to not conduct abortion-related activities prohibited by the MCP at any location, including at their clinics that were receiving no USAID funding whatsoever. Under Helms, Pathfinder and its subgrantees were prohibited from using USAID funds to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

We visited 46 sites including 31 clinics: 26 of the 318 clinics funded by USAID (USAID clinics) and 5 of the 60 clinics primarily funded by the Asian Development Bank (ADB clinics) through the Government of Bangladesh's UPHCP. (Neither the UPHCP nor its ADB-funded clinics received USAID funding.) The remaining 15 sites that we visited were comprised of nine subgrantee headquarters offices and six Pathfinder regional offices. (See the diagram in the "Background" section of this report.) We also interviewed 138 individuals, which included subgrantee clinic staff and officials, Pathfinder regional and headquarters officials, and USAID/Bangladesh staff.

We identified 3,367 incidents of possible noncompliance with the MCP or Helms involving MR services or referrals by seven Pathfinder subgrantees, including

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<sup>5</sup> A document titled "Frequently Asked Questions about Post Abortion Care", located on the USAID Intranet – Global Health homepage, states that "menstrual regulation" and medical abortion (i.e. RU-486) are considered abortion and are thus activities that are prohibited from receiving USAID funding. In addition, "USAID Policy Paper on Population Assistance", dated September 1982 and still in effect, states that USAID must not provide support for abortion or menstrual regulation.

five of the six subgrantees that also participated in the Government of Bangladesh’s ADB-funded UPHCP.<sup>6</sup> Table 1 details the incidents.

**Table 1: Summary of Possible Noncompliance with the MCP or Helms**

| Subgrantee    | Number of Possible Noncompliance Incidents According to |                                  |                                    | Totals       | Type of Possible Noncompliance  |
|---------------|---|----------------------------------|------------------------------------|--------------|---------------------------------|
|               | OIG Fieldwork   | Pathfinder’s Review <sup>7</sup> | UPHCP Summary Reports <sup>7</sup> |              |                                 |
| A             | 1   | 6                                | 0                                  | 7            | 1-both MCP and Helms, 6-MCP     |
| B             | 1   | 1                                | 1,998                              | 2,000        | 1-both MCP and Helms, 1,999-MCP |
| C             | 0   | 3                                | 80                                 | 83           | All MCP                         |
| D             | 0   | 0                                | 24                                 | 24           | All MCP                         |
| E             | 0   | 3                                | 1,247                              | 1,250        | All MCP                         |
| F             | 0   | 2                                | 0                                  | 2            | Both MCP and Helms              |
| G             | 0   | 1                                | 0                                  | 1            | Both MCP and Helms              |
| <b>Totals</b> | <b>2</b>  | <b>16</b>                        | <b>3,349</b>                       | <b>3,367</b> |                                 |

**OIG Fieldwork** – We identified two incidents of possible noncompliance with the MCP or Helms at the clinics of two of the six subgrantees that also participated in the Government of Bangladesh’s UPHCP. The first incident, discovered during our survey, involved possible noncompliance with both the MCP and Helms. A clinic manager at a USAID clinic of Subgrantee B had referred a woman to her husband’s private clinic for MR services. Although the subgrantee discovered the possible noncompliance, terminated the clinic manager, and reported what had occurred to Pathfinder; USAID/Bangladesh was never informed of the incident. The second incident involved possible noncompliance with the MCP at an ADB clinic managed by Subgrantee A. Here, clinic staff admitted to an OIG auditor that they had referred an indeterminate number of patients seeking MR services to a Bangladesh government hospital.

<sup>6</sup> Table 1, Subgrantees A through E were five of the six that also participated in the UPHCP. The sixth subgrantee was not listed in Table 1 because it was not involved in possible noncompliance with the MCP or Helms.

<sup>7</sup> As explained in the Scope and Methodology Section, the information concerning the incidents of possible noncompliance identified by Pathfinder and on the UPHCP Summary Reports were not audited by OIG.

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For both incidents, we could not readily verify that any noncompliance actually occurred because the two clinics did not keep records such as the names of the patients, the dates of the referrals, and the reasons for the referrals; nor did we have ready access to the people who could corroborate the referrals, namely, the clinic manager and the patients. Consequently, there was insufficient evidence to determine whether these MR referrals involved actual noncompliance with the MCP or Helms, or were permitted MCP exclusions. However, we did notify USAID/Bangladesh of the incidents.

**Pathfinder’s Review** – We identified 16 additional incidents involving possible noncompliance with the MCP or Helms that were uncovered by Pathfinder. After it reported one incident of possible noncompliance with both the MCP and Helms to the Mission in August 2004, Pathfinder initiated a three-phased rapid assessment survey of all its subgrantees. Its survey identified 15 additional incidents of possible noncompliance with the MCP or Helms. These incidents involved six subgrantees: two that only operated clinics funded by USAID and four that also operated clinics funded by the ADB.<sup>8</sup> At the time of our fieldwork, Pathfinder had not concluded whether the incidents represented actual noncompliance with the MCP or Helms.

Because Pathfinder had not completed its investigation and because the OIG chose to review additional clinics rather than duplicate Pathfinder’s efforts, the OIG did not review the 16 incidents found by Pathfinder to determine whether they involved noncompliance with the MCP or Helms, or were permitted MCP exclusions. Subsequent to OIG audit fieldwork, Pathfinder informed the OIG that it had confirmed that 2 of the 16 incidents did involve noncompliance with the MCP or Helms. As a result, Pathfinder was taking action to terminate its agreements with the two subgrantees involved in the noncompliance and it recovered \$224,592 from them (see footnote 4).

**UPHCP Summary Reports** – We identified 3,349 incidents of possible noncompliance with the MCP by reviewing UPHCP summary reports that indicated that four Pathfinder subgrantees participating in the UPHCP had performed MR services at their UPHCP clinics (which were not funded by USAID).<sup>9</sup> However, in the time provided for our audit, we were not able to review a representative sample of the incidents to confirm whether they involved actual noncompliance with the MCP, or were permitted MCP exclusions. We also did not audit the data quality of the summary reports. As before, however, we notified USAID/Bangladesh of the incidents of possible noncompliance.

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<sup>8</sup> Table 1, Subgrantees F and G only operated USAID clinics, and Subgrantees A, B, C, and E also operated ADB-funded clinics.

<sup>9</sup> Table 1, Subgrantees B, C, D, and E. As stated in the Background Section, these subgrantees are subject to the Mexico City Policy, regardless of the sources of their organizational funding (i.e., USAID and non-USAID).



A photograph of RIG/Manila auditors conducting an interview with an ADB-UPHCP official and a subgrantee project manager (Dhaka, Bangladesh, 11/09/04)

USAID/Bangladesh and Pathfinder did not adequately monitor subgrantee clinics, contributing to a weak control environment where large numbers of possible noncompliance with the MCP or Helms could occur at subgrantee clinics and not be detected.

According to the MCP, each time it awarded a new subgrant, Pathfinder should have provided to USAID/Bangladesh a description of its efforts to verify the subgrantee's certification that it complied with the MCP; and USAID/Bangladesh should have informed Pathfinder, in writing, that it was satisfied that Pathfinder had made reasonable efforts. Although all subgrantees had provided certifications, there was no evidence that Pathfinder had provided to USAID/Bangladesh a description of its efforts to verify those certifications or that USAID/Bangladesh had informed Pathfinder, in writing, that it was satisfied that reasonable efforts were made. Pathfinder and USAID/Bangladesh officials who were in charge of the daily operations of the NGO Service Delivery Program stated that they were not aware of the two MCP requirements.

Furthermore, USAID/Bangladesh and Pathfinder did not visit or monitor in any way the 60 UPHCP clinics managed by the six subgrantees who received USAID funds and also participated in the UPHCP. Of the 3,367 incidents of possible noncompliance, 3,362 involved UPHCP clinics. Since USAID/Bangladesh and Pathfinder knew that the subgrantees managed clinics under the UPHCP, and that the UPHCP allowed MR services, it would have been prudent for them to implement internal controls to counter the risk that these subgrantees might not comply with the MCP.

In addition to not monitoring the UPHCP clinics, there were weaknesses in the monitoring of all 41 Pathfinder subgrantees and their 318 USAID clinics. For example, Pathfinder trip reports contained little evidence that Pathfinder staff

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regularly checked for compliance with the MCP and Helms. Of 306 Pathfinder trip reports reviewed for the period from January to September 2004, only 22 (7 percent) had such evidence. At USAID/Bangladesh, we found only a few trip reports, and they contained little evidence that Mission staff checked for compliance with the MCP and Helms.

Moreover, Pathfinder's monitoring checklist did not contain adequate steps for monitoring subgrantee compliance with the MCP and Helms. Monitoring of USAID clinics was irregular, and deficiencies found during previous monitoring visits were not always followed up on during subsequent visits.

Because of inadequate monitoring, U.S. abortion-related law and policy concerning abortion may have been violated. Although USAID/Bangladesh and Pathfinder have taken various actions to address the incidents of possible noncompliance with the MCP or Helms—including suspending or restricting funding to all subgrantees involved in the incidents—and some of the monitoring problems noted above, they have not fully implemented those actions. Therefore, to ensure that all incidents of possible noncompliance with the MCP or Helms are investigated and the monitoring problems noted in this report are corrected, we are making the following recommendations.

**Recommendation No. 1: We recommend that USAID/Bangladesh (1) require Pathfinder International, each time a new subgrant is executed, to provide USAID/Bangladesh with a description of the efforts it made to verify the validity of the subgrantee's certification of compliance with the Mexico City Policy, and (2) notify Pathfinder International, in writing, when USAID/Bangladesh is satisfied that reasonable efforts were made by Pathfinder International.**

**Recommendation No. 2: We recommend that USAID/Bangladesh require Pathfinder International to develop and implement an action plan to (1) regularly monitor all its subgrantees and all of their clinics, regardless of the source of funding, for compliance with the Mexico City Policy and the Helms Amendment, and (2) use a more comprehensive monitoring checklist that includes detailed steps for checking subgrantee compliance with the Mexico City Policy and the Helms Amendment, and steps for following up on deficiencies found during prior monitoring visits.**

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**Recommendation No. 3: We recommend that USAID/Bangladesh develop and implement policies and procedures to monitor its Nongovernmental Organization Service Delivery Program, including compliance with the Mexico City Policy and the Helms Amendment. The policies and procedures should require the use of a checklist with detailed steps for monitoring the program and compliance with the Mexico City Policy and the Helms Amendment by Pathfinder and its subgrantees.**

**Recommendation No. 4: We recommend that USAID/Bangladesh, in consultation with USAID/Washington, review Pathfinder's determination regarding the 3,367 incidents of possible noncompliance with the Mexico City Policy, the Helms Amendment or both, and take any additional actions required by the Mexico City Policy and the Helms Amendment.**

**What actions have USAID/Bangladesh and Pathfinder International taken to investigate incidents of possible noncompliance with the Mexico City Policy and the Helms Amendment and prevent future incidents of noncompliance?**

Once they became aware of the first incident of possible noncompliance with the MCP or Helms in August 2004, both Pathfinder and USAID/Bangladesh took quick, significant actions to investigate the incident and search for others, and to improve their monitoring of compliance with the MCP and Helms to prevent future incidents of noncompliance. Some of the actions they implemented were proposed by the OIG after it completed its two-week survey in September 2004. For example, the OIG suggested that the Mission develop an action plan to address the possible noncompliance with the MCP and Helms and to prevent future incidents of noncompliance, and it suggested that the Mission develop a checklist to monitor program performance and compliance with the MCP and Helms. The Mission immediately began developing these documents and completed them before the end of the OIG audit fieldwork. The following sections detail the actions taken by Pathfinder and USAID/Bangladesh.

Pathfinder undertook a detailed three-phased rapid assessment survey in August 2004. The purposes of the survey were to (1) visit all subgrantees and clinics to investigate incidents of possible noncompliance that had come to Pathfinder's attention and to search for other such incidents, and (2) provide all staff at subgrantees and clinics with refresher training on the requirements of the MCP and Helms. As noted on page 11 of this report, Pathfinder's rapid assessment survey identified 16 incidents of possible noncompliance with the MCP or Helms by 6 of its 41 subgrantees. Also as noted on page 11, Pathfinder subsequently confirmed that 2 of the 3,367 incidents, which occurred at two of the suspended subgrantees, did involve noncompliance with the MCP or Helms. As a result,

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Pathfinder was taking action to terminate its agreements with the two subgrantees, and it recovered \$224,592 from them.

Further, Pathfinder suspended or restricted USAID funding to the other five subgrantees involved in possible noncompliance with the MCP or Helms until it has completed a review of the subgrantees to determine whether they had complied with the MCP or Helms, and USAID has reviewed Pathfinder's determination. In addition to the above actions, Pathfinder:

- Prepared a short-term action plan to ensure its subgrantees comply with the MCP and Helms.
- Prepared a long-term action plan to ensure its subgrantees comply with the MCP and Helms.
- Prepared milestones for implementing its action plans.
- Prepared a scope of work to outsource the third phase of its rapid assessment survey because it involves collecting information from over 6,000 subgrantee clinic workers.
- Distributed English and Bangla versions of the MCP to all its subgrantees for further distribution to field offices and clinics, including ADB clinics, and required staff at all clinics to certify they have read and understood the MCP.
- Provided training on the MCP and Helms to its staff and staff from the headquarters and regional offices of all subgrantees in August 2004.
- Developed a "Questions and Answers" flyer on the MCP for subgrantee staff.
- Prepared a one-day training course on the MCP. Pathfinder will coach subgrantee trainers who are to give the course yearly to all subgrantee staff.
- Revised its monitoring checklist to include a section for reviewing subgrantee compliance with the MCP.
- Implemented new procedures for ensuring compliance with the MCP, such as more rigorous measures for orientating and training subgrantees on MCP requirements and detailed instructions on how to report suspected incidents of noncompliance.

In coordination with USAID/Washington, including the Office of the General Counsel, USAID/Bangladesh also has taken various actions to respond to the incidents of possible noncompliance with the MCP or Helms and to prevent future incidents of noncompliance. For example, USAID/Bangladesh immediately requested OIG assistance in investigating the incidents of possible



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noncompliance, and it provided the OIG with substantial logistical support during the OIG’s survey and audit. It also has closely monitored and reviewed all Pathfinder actions, including the ongoing 3-phased rapid assessment survey. In addition to the above actions, USAID/Bangladesh:

- Prepared short-term and long-term action plans to ensure that Pathfinder and its subgrantees comply with the MCP and Helms.
- Prepared milestones for implementing its action plans.
- Imposed more stringent requirements for its approval of prospective subgrantees.
- Provided refresher training on the MCP and Helms.
- Distributed English and Bangla translations of the MCP to all cooperating agencies receiving USAID population funding.
- Developed a monitoring checklist to include a section for checking compliance with the MCP and Helms.
- Prepared a monitoring plan for scheduled visits to all USAID-funded and non-USAID funded clinics.
- Prepared a scope of work for an independent assessment to determine the extent, if any, of incidents of noncompliance with the MCP or Helms by Pathfinder and its subgrantees, and the actions needed to strengthen its oversight of Pathfinder and its subgrantees.

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## **Evaluation of Management Comments**

USAID/Bangladesh, in consultation with USAID’s Office of the General Counsel, provided extensive comments on the draft report, including 17 pages of proposed line-by-line changes to the draft report. The Mission’s comments, except for the 17 pages of line-by-line changes, are in Appendix II to this report.

USAID/Bangladesh agreed with Recommendation Nos. 1, 2 and 3, and it detailed the actions it has taken or plans to take to implement the recommendations, including target completion dates where applicable. Based on our review of the detailed actions, we consider that final actions have been taken on the three recommendations, and they are closed upon issuance of this final report.

USAID/Bangladesh disagreed with Recommendation No. 4. The Mission commented that the recommendation did not accurately reflect Mexico City Policy (MCP) procedures for investigating incidents of possible noncompliance. The Mission also commented that requiring Pathfinder International to suspend all funding to the subgrantees involved with the 3,367 incidents of possible

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noncompliance with the MCP or the Helms Amendment would establish a policy or precedent that could have a negative impact on USAID's programs and its relationships with implementing partners and the communities USAID programs serve. The Mission added that such a policy or precedent (1) would eliminate the option of providing restricted support to an implementing partner while incidents of possible noncompliance were being reviewed, and (2) could later be considered unduly punitive and inconsistent with the application of reasonable principles of fairness and due process. We agreed and revised Recommendation No. 4 accordingly. For Recommendation No. 4, we consider that a management decision has been made but final action is pending.

USAID/Bangladesh also provided 17 pages of proposed line-by-line changes to our draft audit report. Some of the proposed changes dealt with the report's factualness, however, most dealt with nomenclature, word choice or how to present information. Where we agreed, we incorporated proposed changes that involved the report's factualness. We also incorporated most of the other proposed changes because they made the complex issue discussed in this audit report easier to understand.

However, we did not incorporate proposed changes related to the reliability of third-party data cited in our audit report. Specifically, USAID/Bangladesh proposed that our audit report state that (1) the UPHCP summary reports were based on data of uneven and unknown quality, and (2) the 3,349 incidents of possible noncompliance identified in the UPHCP reports included not only menstrual regulation services, but also post-abortion care, which is permissible under the MCP. Because we did not audit the data in the UPHCP reports, we could not confirm the Mission's statements about the quality of the data. Therefore, we did not incorporate those statements. We did, however, add a footnote to Table 1 and a statement to the Scope and Methodology section of this audit report stating that the OIG had not audited the UPHCP summary reports.

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**Scope and  
Methodology****Scope**

The Regional Inspector General/Manila conducted this audit in accordance with generally accepted government auditing standards. The audit covered USAID/Bangladesh's NGO Service Delivery Program implemented by Pathfinder International (Pathfinder), a U.S.-based nonprofit organization, under a \$60 million Cooperative Agreement, which runs from May 27, 2002 through September 30, 2006. The audit objectives were to determine (1) whether there are incidents of possible noncompliance with the Mexico City Policy (MCP) and the Helms Amendment (Helms) on the part of Pathfinder and its subgrantees, and (2) what actions USAID/Bangladesh and Pathfinder have taken to investigate incidents of possible noncompliance with the MCP or Helms and to prevent future incidents of noncompliance. The audit covered the period from May 2002 to November 2004.

For the first audit objective, our compliance testing was limited to the relevant sections of the MCP or Helms that (1) prohibit performing or actively promoting abortions or abortion-related activities, and (2) establish requirements for approving subgrantee funding. While we found 3,367 incidents of possible noncompliance with the MCP or Helms, we could not confirm whether any of the incidents were actual noncompliance with the MCP or Helms, or were permitted MCP exclusions. For example, we could not confirm that two incidents of possible noncompliance found during our site visits involved actual noncompliance because of nonexistent records and because we lacked ready access to a former clinic worker and patients. As for the 3,349 menstrual regulation procedures reported in Urban Primary Health Care Project (UPHCP) Summary Reports as being performed by Pathfinder subgrantees at their UPHCP clinics, in the time we allotted for our audit, we were not able to (1) review a representative sample of the incidents to confirm whether they involved actual noncompliance with the MCP, or were permitted MCP exclusions, and (2) audit the data quality of those summary reports. Finally, because Pathfinder had not completed its investigation and because we chose to review additional clinics and not duplicate the efforts of Pathfinder, we did not review the 16 incidents of possible noncompliance found by Pathfinder.

The audit fieldwork was conducted in Bangladesh from October 26 to November 18, 2004. In addition to visiting USAID/Bangladesh in Dhaka, we visited the headquarters of Pathfinder and six of its eight regional offices. We also visited the headquarters of 9 of 41 subgrantees. Further, we visited 31 clinics managed by 16 of the 41 subgrantees: 26 funded by USAID and 5 primarily funded by the Asian Development Bank. In total, we conducted 46 site visits and interviewed 138 individuals. The fieldwork covered five of the country's six administrative divisions. To obtain a better understanding of those Pathfinder subgrantees who managed clinics funded both by USAID and by the Asian Development Bank, we

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interviewed officials from the headquarters of the Government of Bangladesh's UPHCP. We obtained UPHCP Summary Reports from USAID/Bangladesh, who obtained the reports from UPHCP. These summary reports identified the number of menstrual regulation activities at those ADB-funded clinics operated by Pathfinder subgrantees for the period from April 2001 to September 2004.

We examined and assessed the internal controls used by USAID/Bangladesh and its implementing partners to comply with the abortion restrictions of the MCP and Helms. Specifically, we examined and assessed: (1) the cooperative agreement between USAID/Bangladesh and its grantee, Pathfinder, (2) the agreements between Pathfinder and its subgrantees, (3) program progress reports and other reports prepared by Pathfinder and subgrantees, (4) the policies and procedures used by USAID/Bangladesh and Pathfinder to monitor compliance with the MCP and Helms, (5) the policies and procedures used by subgrantees and their clinics to comply with the MCP and Helms, and (6) USAID/Bangladesh's fiscal year 2004 Federal Managers' Financial Integrity Act review. Finally, we considered prior audit findings.

### **Methodology**

To answer the audit objectives, we interviewed officials and staff from USAID/Bangladesh, the UPHCP, Pathfinder, Pathfinder subgrantees, and 31 subgrantee clinics. At the above organizations, we reviewed:

- Applicable laws, regulations, and USAID and implementing partners' policies and procedures related to the audit objectives.
- Grant and subgrant agreements and related correspondence.
- Documentation such as trip reports, program progress reports, clinic records, and subgrantee audit reports.
- Action plans developed by USAID/Bangladesh and Pathfinder to investigate incidents of possible noncompliance with the MCP or Helms and to prevent future incidents of noncompliance.

We judgmentally selected and visited 31 of 378 subgrantee clinics. The number of clinics, security concerns for some parts of Bangladesh, and time constraints precluded us from using statistical sampling. Because we did not select the clinics statistically, our findings cannot be projected to the entire population of clinics.

The materiality threshold for the first audit objective was set at one incident of possible noncompliance with the MCP or Helms.

**Management  
Comments**

March 2, 2005

**MEMORANDUM**

**FOR:** Regional Inspector General/Manila, John M. Phee

**FROM:** USAID/Bangladesh Mission Director, Gene V. George

**SUBJECT:** Audit of USAID/Bangladesh's Nongovernmental Organization (NGO) Service Delivery Program (Report No. 5 388-05-00X-P)

Thank you for the draft report on the subject audit received via email on February 1, 2005. I appreciate your office's diligent work on this very complicated and important subject. The auditors are to be complimented on their findings.

As requested in the draft Memorandum, USAID/Bangladesh is hereby providing its comments on the recommendations. Attachments are included providing corrective actions already undertaken which should assist in closure of the recommendations.

As discussed in meetings in Washington with representatives of the Inspector General, the General Counsel, the Global Health Bureau, the Asia and Mid East Bureau, the Bangladesh Mission and you, we are also providing comments on the body of the report, pointing out what may be factual inaccuracies. The latter comments are being provided in a line by line format as requested, and a "red-line" format which may be easier to read. These are being provided for your consideration in an effort to strengthen your report on this very complicated and politically sensitive issue, especially considering the widespread interest this audit may generate.

Again, on behalf of the entire USAID/Bangladesh staff, let me extend our sincere appreciation for the excellent work by your team and look forward to receiving the final report. If there is any further assistance we can provide, please let me know.

Attachments:

1. USAID/Bangladesh Management Comments on Recommendations
2. USAID/Bangladesh Comments on the Body of the Report

**Attachment 1 USAID/Bangladesh Management Comments on Recommendations**

The following are USAID/Bangladesh Management comments on the recommendations from the February 1, 2005 draft audit of USAID/Bangladesh's Nongovernmental Organization Service Delivery Program (Report No. 5-388-05-00X-P)

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**Recommendation No. 1: We recommend that USAID/Bangladesh (1) require Pathfinder International, each time a new subgrant is executed, to provide USAID/Bangladesh with a description of the efforts it made to verify the validity of the subgrantee's certification of compliance with the Mexico City Policy, and (2) notify Pathfinder International, in writing, when USAID/Bangladesh is satisfied that reasonable efforts were made by Pathfinder International.**

USAID/Bangladesh agrees with this recommendation and is in the process of implementing it whenever a new subgrant is executed. USAID/Bangladesh has conveyed the requirement described in Recommendation No. 1(1) orally to staff of Pathfinder International during meetings. In addition, USAID/Bangladesh has prepared a model letter to be sent by the USAID Agreement Officer to Pathfinder International which includes, in the list the documentation required to be submitted with a request for USAID approval of a new subgrant, a request for Pathfinder International to provide a description of the efforts that Pathfinder International has made to verify the validity of the subgrantee's certification of compliance with the Mexico City Policy. (See Exhibit A for a copy of the Model Documentation Requirements Letter, draft dated February 28, 2005, from a USAID Agreement Officer to Pathfinder International.) In response to these oral requests and consistent with clause (e)(7) of the Mexico City Policy, Pathfinder International's recent requests for USAID approval of subgrants (which includes "renewals" of subgrants as that term is used by Pathfinder International) have included descriptions of their efforts to verify the subgrantee's certification of compliance with the Mexico City Policy. (See Exhibit B for a copy of the March 2, 2005 letter to the USAID/Bangladesh Supervisory Regional Agreement Officer from Robert Timmons, Pathfinder International Chief of Party, requesting approval of Grant Renewals for four foreign non-governmental organizations (FNGOs) for FY 2005). As provided for in Exhibit A, USAID/Bangladesh will inform Pathfinder International in writing whether USAID/Bangladesh is satisfied that reasonable efforts have been made by Pathfinder International to verify the certification as described in Recommendation No. 1(2).

The procedures to satisfy this Recommendation are already in place, as noted above. USAID/Bangladesh therefore requests closure of Recommendation No. 1 of the subject audit report.

**Recommendation No. 2: We recommend that USAID/Bangladesh require Pathfinder International to develop and implement an action plan to (1) regularly monitor all its subgrantees and all of their clinics, regardless of the source of funding, for compliance with the Mexico City Policy and the Helms Amendment, and (2) use a more comprehensive monitoring checklist that includes detailed steps for checking subgrantee compliance with the Mexico City Policy and the Helms Amendment, and steps for following-up on deficiencies found during prior monitoring visits.**

USAID/Bangladesh agrees with this recommendation. Pathfinder International has already developed an action plan (See Exhibit C. "NSDP Comprehensive Plan to Ensure Compliance with the Mexico City

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Policy,” dated September 23, 2004) and a Policies and Procedures document (See Exhibit D “Pathfinder International Policies and Procedures for Compliance with the Mexico City Policy in Bangladesh © 2004”) which provide for regular monitoring of all subgrantees and their clinics, for compliance with the Helms Amendment for use of USAID funds and for compliance with the Mexico City Policy for FNGOs for all sources of family planning assistance. Pathfinder International has also developed a comprehensive monitoring checklist that includes detailed steps for checking subgrantee compliance with the Helms Amendment for use of USAID funds and for compliance with the Mexico City Policy for FNGOs for all sources of family planning assistance (See Exhibit E “NSDP Mexico City Policy (MCP) and Tiaht Monitoring tool,” dated November 2004). Pathfinder International is now including descriptions of the results of reviews conducted using these tools in its recent requests for approval of subgrant renewals (Exhibit B). Further, USAID/Bangladesh has been monitoring compliance by Pathfinder International during recent site visits. (See Exhibits F1 and F2 for two examples of Site Visit Reports and completed checklists for site visits to Nongovernmental Organization Service Delivery Program offices and clinics, conducted by USAID/Bangladesh on February 8, 2005 and February 28, 2005.)

The action plan and checklists are in place and are being implemented. USAID/Bangladesh therefore requests closure of Recommendation No. 2 of the subject audit report.

**Recommendation No. 3: We recommend that USAID/Bangladesh develop and implement policies and procedures to monitor its Nongovernmental Organization Service Delivery Program, including compliance with the Mexico City Policy and the Helms Amendment. The policies and procedures should require the use of a checklist with detailed steps for monitoring the program and compliance with the Mexico City Policy and the Helms Amendment by Pathfinder and its subgrantees.**

USAID/Bangladesh agrees with this recommendation and has developed and is implementing expanded policies and procedures to monitor the Nongovernmental Organization Service Delivery Program, including compliance with the Helms Amendment for use of USAID funds and for compliance with the Mexico City Policy for FNGOs for all sources of family planning assistance. USAID/Bangladesh developed and is implementing an Action Plan (See Exhibit G “Future USAID/Bangladesh Action Plan for Mexico City Policy and other Population Assistance Requirements,” drafted November 17, 2004 and updated on March 1, 2005), and Mission Order No. 200 (See Exhibit H. Mission Order No. 200 for “Procedures for Reporting Potential Mexico City Policy Violations” dated February 8, 2005) which together represent an expansion of existing measures for monitoring program performance to include specific items for monitoring compliance with Mexico City Policy and the Helms Amendment. Checklists for monitoring the program during field visits have been expanded to include items monitoring compliance by Pathfinder and its subgrantees with the Helms Amendment for use of USAID funds and for compliance with the Mexico City Policy for FNGOs for all sources of family planning assistance, and are now being used. (See Exhibit I for a copy of the updated checklists, dated February 24, 2005). In addition, bi-monthly monitoring plans are being established and implemented (See Exhibit J for “USAID/PHN Bi-Monthly Monitoring Plan for NSDP March-April 2005,” dated February 23, 2005).



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The recommended policies and procedures have been developed and are being implemented. USAID/Bangladesh therefore requests closure of Recommendation No. 3 of the subject audit report.

**Recommendation No. 4: We recommend that USAID/Bangladesh (1) further investigate all 3,367 possible violations to determine whether any were actual violations of the Mexico City Policy or the Helms Amendment, (2) require Pathfinder to suspend all funding to its subgrantees under its Nongovernmental Organization Service Delivery Program that are involved in the 3,367 possible violations until a final determination is made by Pathfinder International of the possible violations, and (3) take any additional actions required by the Mexico City Policy and the Helms Amendment, if it determines that any of the 3,367 were actual violations.**

USAID/Bangladesh respectfully disagrees with Recommendation No. 4 as currently drafted. Recommendation No. 4(1) as currently written does not accurately reflect the procedures specified in the Mexico City Policy. The Mexico City Policy makes clear in Part I Grants and Cooperating Agreements with U.S. Nongovernmental Organizations, Section (e)(4)(iii), that “the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred.” The clause further states that “USAID may also review the family planning program of the subrecipient under these circumstances, and USAID shall have access to such books and records and information for inspection upon request.” As required under the Mexico City Policy clauses, Pathfinder International is already conducting an extensive review of the FNGO subgrantees that received sub-grants under the Nongovernmental Organization Service Delivery Program, specifically those where the 3,367 possible incidents have occurred. USAID/Bangladesh, in consultation with USAID/Washington, will review Pathfinder’s determination regarding these incidents and will take appropriate action as provided for in Recommendation No. 4(3).

With regard to Recommendation No. 4(2), USAID/Bangladesh’s view is that imposing a requirement on Pathfinder International to suspend all funding to the subgrantees under the Nongovernmental Organization Service Delivery Project that are involved with the 3,367 possible incidents would, in effect, establish a USAID policy or precedent that, whenever a suspected incident is reported, even if the incident appeared to be completely unfounded or to be based on rumor, the U.S. organization will be required to suspend funding to the subgrantee(s) involved. Such a policy could have a considerably negative impact on the Agency’s programs and its relationships with FNGOs and the communities that the USAID programs are intended to reach. Such a policy would also eliminate any option for continuing to provide restricted support to an FNGO while the incident(s) is being reviewed. A firm, no-exception policy of this type can lead to situations in which the suspension action may later be considered to be unduly punitive and inconsistent with the application of reasonable principles of fairness and due process.

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## Attachments:

- Exhibit A. Model Documentation Requirements Letter, draft dated February 28, 2005, from a USAID Agreement Officer to Pathfinder International
- Exhibit B. Letter, dated March 2, 2005, to the Supervisory Regional Agreement Officer from Robert Timmons, Pathfinder International Chief of Party, requesting approval of four renewals for four FNGOs for FY 2005.
- Exhibit C. “NSDP Comprehensive Plan to Ensure Compliance with the Mexico City Policy,” dated September 23, 2004
- Exhibit D. “Pathfinder International Policies and Procedures for Compliance with the Mexico City Policy in Bangladesh © 2004”
- Exhibit E. “NSDP Mexico City Policy (MCP) and Tiahrt Monitoring tool,” dated November 2004
- Exhibit F1 and F2. “Site Visit Reports and completed checklists for site visits to Nongovernmental Organization Service Delivery Program offices and clinics” dated February 8, 2005 and February 28, 2005.
- Exhibit G. “Future USAID/Bangladesh Action Plan for Mexico City Policy, Helms Amendment and other Population Assistance Requirements,” dated March 1, 2005
- Exhibit H. Mission Order No. 200 on the subject of “Procedures for Reporting Mexico City Policy Violations” dated February 8, 2005
- Exhibit I. USAID/Bangladesh MCP Checklists, dated February 24, 2005
- Exhibit J. “USAID/PHN Bi-Monthly Monitoring Plan for NSDP March-April 2005,” dated February 23, 2005

### USAID/Bangladesh Comments on Draft RIG Report

## Attachment 2 USAID/Bangladesh Comments on the Body of the Report

### Overall comments

1. **The Report does not clearly distinguish between the Helms Amendment and the Mexico City Policy.** The distinction is significant because of the different requirements associated with each. The Helms Amendment provides that USAID funds may not be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions. The Mexico City Policy requires foreign NGOs (FNGOs), as a condition for receiving USAID family planning assistance, to certify that they will not perform or actively promote abortion as a method of family planning with funds from any source. Therefore, by not clearly distinguishing

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between the two, the Report introduces factual errors. The Report needs to specify which of these incidents may have been Mexico City Policy violations, which Helms violations, and which may have involved both. Furthermore, at the outset of the Report the number of FNGOs involved in the incidents needs to be clearly related to the number of incidents of possible non-compliance. A total of seven out of 41 FNGO subrecipients may have been in violation of the Mexico City Policy, the Helms Amendment, or both. *We have added references indicating whether the incidents involve the Mexico City Policy, the Helms Amendment, or both.*

2. **The main text of the Report should include a comment about the poor and uneven quality of the data on which the incidents involving possible non-compliance with the Mexico City Policy, the Helms Amendment, or both are based.** According to the Asian Development Bank (ADB), it did not verify any of the data that was used to prepare the ADB Summary Report, the source used to identify the vast majority of the incidents of possible non-compliance with the Mexico City Policy. The RIG acknowledged the poor and uneven quality of the data in a footnote to a chart included in an earlier version. Such a statement should appear in the main text of the Report. The Report should also note that the ADB data reports aggregate sums including both the provision of post-abortion care, an activity permitted under the Mexico City Policy, and the provision of abortion services, which is prohibited under the Mexico City Policy. *We have added a suggested footnote addressing data quality issues in the main body of the Report.*
3. **Recommendation #4 should advise the Mission to verify results from investigations already undertaken by Pathfinder.** The Mission has worked hard to complete three of the four recommendations made in the Report. However, because the MCP clauses require the recipient to make a determination prior to Agency action, to be consistent with the clauses we propose that the fourth recommendation be changed from “investigate the possible (3,367) possible violations discussed in the Report and take appropriate actions if any actual violations are found” to “review Pathfinder’s determination regarding the 3,367 incidents involving possible non-compliance with the MCP and/or the Helms Amendment, and take any additional actions required by the Mexico City Policy and the Helms Amendment.”
4. The report does not distinguish between performing abortion services and referrals for abortion, including making referrals which may have been permissible under the conditions set forth for passive referral.<sup>1</sup> *This has been corrected by fully explaining the passive referral exception in the line-by-line changes which follow.*
5. Repeated references to FNGOs/subgrantees would be clearer if the FNGOs were identified by number, for example FNGO 1, FNGO 2, etc. *These references have been added as footnotes.*

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<sup>1</sup> See Part I, Grants and Cooperative Agreements with U.S. Nongovernmental Organizations, paragraph (e)[10][iii][A][II] which states that the Mexico City Policy does not consider “passively responding to a question regarding where a safe, legal abortion may be obtained” to be active promotion of abortion “if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely,” and Part II, Grants and Cooperative Agreements with Non-U.S., Nongovernmental Organizations, paragraph (e)[13][iii][A][II], which states that the Mexico City Policy does not consider “passively responding to a question regarding where a safe, legal abortion may be obtained” to be active promotion of abortion “if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely.”

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6. Use of the term ‘violation’:

- a. In cases where references are made to actual violations, it is not clear who made the determination that the incident was an ‘actual’ opposed to a ‘possible’ one.
- b. It would be more accurate to refer to unconfirmed possible violations as “incidents involving possible non-compliance with the MCP and the Helms Amendment.”
- c. It would be more accurate to refer to the 3,349 possible incidents of non-compliance that were identified in the report produced by the Asian Development Bank (ADB), which was of questionable quality and which combined post-abortion care and the provision of abortion as “possible incidents” of non-compliance with the Mexico City Policy.
- d. It would be clearer to refer to the two violations confirmed by Pathfinder International as “confirmed violations.”

*The suggested revisions use these terms.*

Attachment 2 – USAID/Bangladesh Comments on the Body of the Report contained 19 pages, which included 2 pages of overall comments and 17 pages of line by line changes. The line by line changes were not included in Management Comments Section.