



**Legislative Bulletin.....April 2, 2008**

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**H.R. 5501**— Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008

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**Order of Business:** H.R. 5501, formerly known as PEPFAR, is scheduled to be considered Wednesday, April 2. Information regarding the rule will be forthcoming.

**Background:** In May 2001, President Bush made the first of numerous pledges to give \$200 million to a new, yet-to-be-named global fund to fight AIDS. The Global Fund, an organization created from negotiations with several U.S. officials, began operation in January 2002. Initially, the efforts of the Global Fund were directed toward containing the spread of HIV/AIDS, but soon expanded to include the spread of tuberculosis and malaria. The President debuted the President’s Emergency Plan for AIDS Relief (PEPFAR) in his January 2003 State of the Union Address. Since the mid-1980s, the U.S. Agency for International Development (USAID) had been implementing bilateral international AIDS projects, and PEPFAR became an additional program for such support. It was authorized in May 2003 by P.L. 108-25, which combined both USAID and PEPFAR under the heading of a Global AIDS Coordinator at the Department of State.

According to [CRS](#),

The PEPFAR initiative promised substantial new resources for fighting AIDS, including \$9 billion over five years to be committed in 14 (later expanded to 15) of the most afflicted countries of the world. This new funding is being channeled through the Global HIV/AIDS Initiative (GHAI), directed by the Office of the Global AIDS Coordinator (OGAC). PEPFAR also promised \$5 billion over five years for ongoing bilateral AIDS programs in 105 other countries, as well as \$1 billion in contributions to the Global Fund. Officials said that overall, PEPFAR represented \$10 billion in “new money”—that is, \$10 billion in additional funds beyond spending that would have occurred if existing programs had simply been continued at then-current spending levels.

**Funding:** In 2003, PEPFAR was authorized at \$15 billion over 5 years. Since then, PEPFAR has received \$18.3 billion in appropriations over the past five fiscal years. The President’s FY 2009 budget requested that funding for PEPFAR be doubled to \$30 billion. H.R. 5507 provides an authorization level of \$50 billion. Both proposed authorization amounts—\$30 billion or \$50 billion—raise serious concerns among conservatives. Some African non-governmental organizations (NGOs) have asked that the U.S. not grant such a large increase in funding because of capacity issues—some organizations do not have the infrastructure to support such funding,

meaning that much of the funding could be misspent. It will be critical to ensure that what resources are provided through H.R. 5501 are spent on evidence-based programs that have proven to be successful and that respect the pro-family and pro-life cultures of the countries in which they are implemented.

In addition to capacity-related concerns, the U.S. provided \$24 billion in foreign aid in FY 2008, including approximately \$6 billion for PEPFAR efforts. This legislation would increase U.S. foreign aid to \$28 billion in FY 2009 (barring any increases in other foreign aid)—a 15% increase in overall foreign aid spending.

**Foreign Affairs Committee Actions:** As you may know, a bi-partisan compromise was reached among Acting Chairman Berman and the Democratic Foreign Affairs Committee staff and the Ranking Member Ros-Lehtinen and the Republican Foreign Affairs Committee staff on February 27, 2008, just prior to the markup of H.R. 5501. No amendments were offered in Committee, and the bill passed by voice vote. While no recorded vote was taken, the following objections by RSC Members were made with regards to the bi-partisan H.R. 5501 reauthorization:

- The bill takes money out of the pockets of Americans who need it, including veterans returning from Iraq and Afghanistan who need proper treatment and care.
- While Congress is being told that the money to rebuild Afghanistan is nonexistent, we are authorizing \$50 billion for AIDS in Africa.
- The appearance of benevolence for the sake of leaving the American people out to dry is abhorrent.
- There was a lack of proper procedure once the bipartisan agreement moved through the Committee, where Members were discouraged from offering perfecting amendments to an agreement reached hours before markup.
- H.R. 5501 significantly increases a significant deficit.

**Summary:** The initial draft language of the bill, introduced by former Chairman Lantos months ago, contained pro-life and pro-family concerns. In an effort to receive bi-partisan support on what was once a bi-partisan initiative in 2003, the following issues were addressed in H.R. 5501. While not all issues have been as thoroughly addressed as they would have been under a Republican majority, many of the serious concerns with the harmful pro-life and pro-family provisions have been quelled. **\*\*Please note below the concerns that still remain\*\***

- The current Abstinence/Be Faithful/Condoms (ABC) program is not maintained. Instead, new language was added to require the Coordinator to provide “balanced funding for prevention activities for sexual transmission of HIV/AIDS,” and to ensure that abstinence and faithfulness programs “are implemented and funded in a meaningful and equitable way...” The bill also includes a requirement that the Coordinator establish a strategy for HIV prevention in each host country, and if the strategy provides less than 50 percent of sexual prevention funds for abstinence and faithfulness programs, the Coordinator is required to provide Congress with a justification of the failure to reach this level. According to House Report [110-546](#),

The objective epidemiological evidence to be used for the Coordinator’s determination should be primarily the Demographic and Health Surveys, the AIDS Information Service (AIS), and other United States Government supported

surveys, including surveys requested by the Congress and other independent, scientifically-sound studies.

However, since the language itself does not define “balance”, this provision may provide a Coordinator opposed to abstinence programs flexibility to escape the bill’s requirements.

- The bill modifies the Majority’s language attempting to clarify that this bill should focus on providing HIV/AIDS education and testing through existing family planning programs without integrating family planning into HIV/AIDS programs. References to family planning *are* included in the bill, but only in the context of family planning done through organizations that are “supported by US government” (which should ensure that such programs are covered under the Mexico City Policy). The Mexico City Policy (MCP) is an administrative policy that prohibits US funding from going to any foreign nongovernmental organizations that performs and/or promotes abortion.
- The bill maintains the Prostitution Pledge, the current requirement that states that organizations receiving funds under the Act must have a policy opposing prostitution and sex trafficking.
- H.R. 5501 amends the “Conscience Clause” by adding to the existing language that groups are not required to “endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.”
- All references to reproductive health, which existed in the initial Democratic proposal, have been removed.
- The bill retains a provision in current law that caps the U.S. contribution to the Global Fund at 33%. In addition, language requiring that the Global Fund meet certain transparency and accountability benchmarks is added, along with a sense of Congress referring to provisions of past appropriations bills requiring the withholding of 20 percent of the U.S. contributions to the Global Fund unless it meets certain conditions.
- The bill adds 14 Caribbean countries to the existing list of countries in which the Global AIDS Coordinator is given explicit statutory authority over HIV/AIDS programs.
- The bill is renamed “The Tom Lantos and Henry Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2008.”

### **Conservative Concerns:**

- **\$50 billion reauthorization; \$35 billion above original 2003 PEPFAR authorization.** Some African non-governmental organizations (NGOs) have asked that the U.S. not grant such a large increase in funding because of capacity issues—some organizations do not have the infrastructure to support such funding, meaning that much of the funding could be misspent. According to the House Committee on Foreign Affairs Republican Staff, while not a precise measurement, an indication of NGO over-capacity may be found during 2005-

2006, when assistance commitments grew from \$4.3 billion in 2005 to \$5.6 billion in 2006, while actual disbursements grew at a much slower rate, from \$3.5 billion to \$3.9 billion. Furthermore, the Global Fund to Fight AIDS has yet to identify qualified proposals that would absorb the resources that it already has, resulting in a Fund surplus of nearly \$1.3 billion after paying for all anticipated new grants and renewals over the coming year.

Currently, PEPFAR is treating two million people, and to increase treatment by only 50 percent when the bill increases funding by 200 percent may cause some concern.

- The Kemp-Kasten anti-coercion law is not applied to Global Fund monies, effectively allowing programs such as the United Nations Population Fund (UNFPA) to continue receiving funds through the Global Fund. The Kemp-Kasten amendment prohibits giving U.S. “population assistance” funds to “any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”
- Some conservatives may be concerned that the new language regarding the “meaningful and equitable” inclusion of abstinence and fidelity programs in prevention programs could allow too much room for interpretation by a Coordinator who may not support pro-abstinence and pro-fidelity programs in the future. In addition, there is little, if any, enforcement of the “meaningful and equitable” incorporations of abstinence and fidelity programs. It may be important for some conservatives to note that even with the spending requirement for abstinence and be faithful programs in the original PEPFAR bill, the U.S. government has remained the single largest distributor of condoms in the world.

Furthermore, prior to the implementation of PEPFAR, the only country to ever demonstrate a nationwide reduction in HIV incidence was Uganda. The success was driven by the African-grown, grassroots, low-cost “ABC” model of HIV prevention, based on three common-sense messages, each targeted to a different population: 1) the promotion of abstinence until marriage or delay of sexual debut for youth and unmarried adults, 2) the promotion of fidelity within marriage and partner reduction for sexually active unmarried adults, and 3) the promotion of the consistent and correct use of condoms for especially high-risk sub-populations, such as prostitutes and their customers, and substance abusers and their equipment-sharing or sexual partners. The evidence shows that ABC works to prevent sexual transmission of HIV/AIDS in a generalized epidemic such as you find in sub-Saharan Africa. As a result of this sound approach, Uganda now has company in finding success: several PEPFAR focus countries have started to see reductions, including Kenya, Cote D'Ivoire, and Ethiopia.

- The bill does not apply any statutory language similar to the Mexico City Policy to require that organizations providing HIV/AIDS care with PEPFAR funds agree that they will not promote or perform abortions as a method of family planning.
- The bill doubles the U.S. contribution to the UN-affiliated Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria to \$2 billion a year. However, the U.S. only has one vote on the Global Fund, despite contributing over a quarter of the budget. The Fund

operates programs not bound by U.S. laws on abortion, needle exchange, prostitution/trafficking policy, and others.

- There are no enforcement mechanisms for Global Fund accountability, which could render the proposed PEPFAR accountability provisions ineffective. The following was mentioned in the RSC Policy Brief on PEPFAR updated February 26, 2008:

The Global Fund was created in 2002 as an international funding instrument that could consolidate donations from government and private sources to address the AIDS pandemic, tuberculosis, and malaria on a global scale. Primary recipients of Global Fund grants are largely government entities, which then channel the money through numerous “sub-recipients.” According to the Global Fund’s website, “as a partnership between governments, civil society, the private sector, and affected communities, the Global Fund represents an innovative approach to international health financing.”

The 2003 PEPFAR legislation authorized a contribution to the Global Fund of up to \$1 billion for FY 2004 and “such sums as may be necessary” for fiscal years 2005 through 2008. Over \$3 billion has been appropriated to the Global Fund over the past five years, including \$840 million for FY 2008 (including the rescission). The proposed reauthorization would provide an authorization of up to \$2 billion for FY 2008 and FY 2009, and “such sums” for the remaining three years.

Currently, the U.S. provides one-third of all Global Fund money—although the program is designed to be a “partnership between governments.” While an important aspect of the global strategy to fight HIV/AIDS, TB and malaria, the Fund does not provide any information about its grant recipients or their activities, and is lacking in basic oversight and monitoring. Nor is the Global Fund covered by any pro-life policy (such as the Mexico City Policy, or the Kemp-Kasten Amendment, which prohibits funding of any organization that either supports or participates in the management of a program of coercive abortion or involuntary sterilization). There is documentation proving that the Global Fund may be granting money to organizations such as Marie Stopes (the UK equivalent to Planned Parenthood), the United Nations Population Fund (which supports China’s “one-child” policy), as well as the Chinese Health Department itself (supporting the “one-child” policy). If this legislation is enacted, the proponents of the Chinese one-child policy will have successfully done an end run around Kemp-Kasten.

When the 108th Congress authorized the first contribution to the Global Fund to Fight HIV/AIDS, Tuberculosis, it was assured that the Fund would not fall prey to the same wasteful and corrupt practices of the U.N. and that the Fund would guarantee full transparency and accountability. The current law contains some important provisions to protect the taxpayer investment in this multilateral disease-fighting organization. However, the first few years of the Fund’s operation has demonstrated that these provisions have not been sufficient to ensure full accountability and transparency at the Fund. In addition, the Fund has failed to provide Congress with all documents requested, including reports of the “independent” Inspector General. The Fund has lost money by relying on the UN Development Program (UNDP) in Burma, failing to recoup funds from terminated grants there. Burma is not the only country where the Fund relies on UNDP, but actually uses the UN agency as a “safer” alternative to directly fund rogue regimes such as Zimbabwe and Sudan. UNDP is under investigation by the U.S. Senate Permanent Subcommittee on Investigations for using donor money to help North Korea purchase illicit weapons, and

Zimbabwe officials purchase “blood diamonds,” among a variety of other questionable or illegal activities.

Furthermore, the Fund has failed to adequately safeguard the quality of medicines procured using its funding until outside groups and others have alerted the Fund to specific problems. The bill contains a variety of important transparency measures in a non-binding “Sense of Congress” provision. Some conservatives may be concerned that these provisions are not made binding.

- The treatment floor has not been addressed, allowing PEPFAR dollars to still flow to conferences, etc. and not specifically to HIV/AIDS treatments. The treatment floor is a provision in the 2003 PEPFAR that requires 55 percent of all PEPFAR funds to be used for treatment of HIV/AIDS, leaving the other 45 percent for prevention programs. The purpose of this requirement was to fight the tendency of the foreign aid establishment to lobby foreign aid donors to spend money primarily on meetings, travel, consultants, “technical assistance” and foreign aid contractors based in Washington, DC and European capitals. This raises serious concerns among many conservatives, least among those being that the lack of a prescriptive treatment floor leaves the program open to increased fraud and abuse. Current law reads:

...For fiscal years 2006 through 2008, not less than 55 percent of the amounts appropriated pursuant to the authorization of appropriations under section 401 for HIV/AIDS assistance for each such fiscal year shall be expended for therapeutic medical care of individuals infected with HIV, of which such amount at least 75 percent should be expended for the purchase and distribution of antiretroviral pharmaceuticals and at least 25 percent should be expended for related care.  
[\(Public Law 108-25, Sec. 403\(a\)\)](#)

H.R. 5501 eliminated this treatment floor by stating:

For each of the fiscal years 2009 through 2013, not less than 20 percent of the amounts appropriated pursuant to the authorization of appropriations under section 401 for HIV/AIDS assistance for each such fiscal year shall be expended for HIV/AIDS prevention activities consistent with section 104A(d) of the Foreign Assistance Act of 1961.

In a [webmemo](#) from the Heritage Foundation, analysts wrote the following regarding the need for a treatment floor:

In any future reauthorization, Congress should preserve the safeguards that prioritize life-saving treatment for those who are infected with HIV/AIDS. Current law requires a minimum allocation of funding for lifesaving medical care. Sec. 403(a) requires that no less than 55 percent of all funds be spent on medical care, with most of that amount (75 percent) spent specifically on medicine. This provision ensures that the lion’s share of U.S. tax dollars reaches the patients it is intended to help rather than being siphoned off into bureaucratic overhead or extraneous activities. This provision not only saves lives, but reduces the infectivity of those who are infected, which can help reduce the spread of the disease. Moreover, treating parents helps to prevent their children from becoming orphans. The House bill, however, would strip out this requirement.

- The new bill greatly expands the scope of PEPFAR, and leads to numerous jurisdictional concerns regarding PEPFAR's funding for research and other similar activities. For example, the bill inserts an authorization for tuberculosis vaccine research, which diverts foreign aid money from life-saving medical treatment to biomedical research. In addition, the reauthorization would require PEPFAR to support U.S. universities which are working on food safety issues, diverting funds from life-saving treatment to further subsidize U.S. universities.
- The bill dilutes the program with new requirements for a host of pet development causes, including food, water, treatment of other infectious diseases, gender empowerment programs, poverty alleviation programs, microcredit, schools and teachers, legal aid, agricultural assistance, government advocacy, biomedical research, and so on. These additions transform a targeted and accountable \$15 billion AIDS program into an unaccountable, unspecified \$50 billion development program.
- The bill would provide assistance for treatment of other diseases not covered by the bill currently (for example, other sexually transmitted infections). Treating such diseases does not prevent the spread of HIV/AIDS.
- The bill eliminates the safeguards in the current law requiring money to be spent on life-saving HIV/AIDS treatment and proven prevention methods.
- The bill does not contain a dedicated funding stream for mother-to-child transmission prevention, which has proven to be a key prevention mechanism in many countries. Some conservatives may be concerned that this would leave mother-to-child prevention programs to go ignored and under-funded. As was noted in the RSC Policy Brief on PEPFAR released in early February, a [recent article](#) suggests that there are organizations encouraging HIV infected women in Africa to seek abortion as an option for their pregnancy. By not including a dedicated funding stream (especially in the midst of such large funding increases) to address mother-to-child transmission prevention, this trend could undesirably be furthered.
- Some conservatives may be concerned that the bill extends treatment to concentrated epidemics, going beyond the intended treatment of generalized epidemics. According to the Heritage Foundation,

The bill has been directed primarily at sub-Saharan Africa, both in the President's rhetoric and in the design of the law. Africa was the original focus because of its generalized HIV/AIDS epidemic. Generalized means that the epidemic (defined as when the average infected person is likely to infect more than one other person) reaches the general population. Many countries have a concentrated HIV/AIDS epidemic; i.e., one that is concentrated among those in particular subpopulations who engage in high-risk behaviors--intravenous drug users who share needles, prostitutes, and men who have sex with men--but does not reach the population at large. Other than a few small countries around the Caribbean such as Haiti, the Bahamas, and perhaps Guyana, the only countries to have experienced generalized epidemics are in sub-Saharan Africa.

The original law was an emergency commitment to help those countries with generalized epidemics. As President Bush explained, there was "a severe and

urgent crisis” in “whole countries in Africa.” The goal of the President’s “Emergency Plan for AIDS Relief” was “to turn the tide against AIDS in the most afflicted nations of Africa and the Caribbean.” The program was not intended as a generic program to fight AIDS wherever it might be found, but as a targeted program to “turn the tide” against a particular humanitarian crisis.

In another example of mission creep, the House bill expands the scope of the initiative to include Europe, Asia, Latin America, and any country in which HIV infection rates are high among the subpopulations of prostitutes, drug users, and men having sex with men. These regions do not have the same battle with a generalized AIDS epidemic as do the original focus countries in sub-Saharan Africa and the Caribbean.

- The Family Research Council illustrates some concerns regarding the integration of “medical accuracy” and “scientifically accurate” language into H.R. 5501 in this statement:

In the section on Policy Planning and Coordination, the House bill calls for a strategy regarding all prevention efforts (p. 19) that fund “scientifically-accurate educational services.” This provision includes a number of prevention efforts, such as “prevention strategies based on sound epidemiological evidence,” “promoting abstinence from sexual activity and substance abuse,” “encouraging delay of sexual debut,” “promoting effective use of male and female condoms,” etc. The term “scientifically-accurate” is used not only in reference to abstinence and faithfulness programs, but also in regard to condoms and other prevention efforts. The term “medically accurate” is also contained in a finding on p. 12 and applies to abstinence and faithfulness as well as condom programs. These terms are not defined in any way to undermine abstinence or faithfulness programs. Additional clarifying language may be needed to ensure that accuracy is a standard applied to all programs, not just abstinence programs.

- Some conservatives may be concerned that the bill encourages expansion of the program beyond the poorest and neediest countries in Africa and the Caribbean to countries such as Russia, China and India, including countries that have their own nuclear programs and space exploration programs.

### **Additional Information Resources:**

The Heritage Foundation

[Keeping PEPFAR International AIDS Relief on Target](#)

[PEPFAR "Compromise" Abandons Successful Approaches to International AIDS Relief](#)

Initial RSC PEPFAR Policy Brief

[RSC Policy Brief--PEPFAR](#)

Congressional Quarterly

[Lawmakers Push Bipartisan Deal on Global AIDS Bill](#)

First Things

[AIDS and the Churches: Getting the Story Right](#)

World Health Organization

[Global HIV prevalence has leveled off](#)



**Committee Action:** H.R. 5501 was introduced on February 28, 2008, and referred to the Committee on Foreign Affairs. On Wednesday, February 28, 2008, the Committee held a mark-up and ordered the bill reported by voice vote.

**Administration Position:** A formal Statement of Administration Policy has not yet been released, but sources indicate the White House is likely to support the legislation.

**Cost to Taxpayers:** H.R. 5501 authorizes \$50 billion over 5 years at roughly \$10 billion a year. According to CBO, implementing H.R. 5501 would cost \$1.5 billion in 2009 and \$35 billion over the 2009-2013 period, assuming appropriation of the authorized amounts. CBO is estimating the expenditure at between \$13 and \$14 billion less than the authorized amount. This CBO estimate of \$35 billion over the 2009-2013 period is \$5 billion higher than the President's request. CBO further estimates that the amounts would not be fully spent until 2018—five years beyond the period covered by this bill.

**Does the Bill Expand the Size and Scope of the Federal Government?** Yes, the bill significantly increases authorizations, and expands the authority of programs that are part of the original PEPFAR initiative.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** The Committee on Foreign Affairs, in [House Report 110-546](#), asserts that, “H.R. 5501 does not include any earmarks, and does not include limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.”

**Constitutional Authority:** The Committee on Foreign Affairs, in [House Report 110-546](#), cites general constitutional authority in Article I, section 8 of the U.S. Constitution.

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