



# The Mexico City Policy

## An Introduction

Brief No. 1

On January 23<sup>rd</sup>, 2017, President Donald Trump issued a presidential memorandum<sup>1</sup> reinstating the Mexico City Policy, a policy that prevents certain U.S. foreign assistance from funding foreign nongovernmental organizations (NGOs) that perform or promote abortion.

Numerous statutory provisions in U.S. federal law, such as the Helms Amendment, the Biden Amendment, and the Siljander Amendment, prevent the U.S. Government from paying for the abortion procedures or motivating someone to have an abortion, research into methods for performing abortion, and for lobbying for abortion, respectively. But because statutory law does not prohibit funding for organizations that otherwise participate in abortion-related activities, the Mexico City Policy is unique as it is the only policy that fully blocks funding for foreign NGOs involved in performing or promoting abortion in other countries.

Although there has been some variation as to how the Mexico City Policy has been implemented under various administrations, the core elements have remained the same. The final implementing guidelines of the latest Policy have not yet been made public. The following provides a basic introduction to how the Mexico City Policy has traditionally been implemented and to how the new Policy differs from previous versions.

### What is the Mexico City Policy?

The Mexico City Policy<sup>2</sup> is a policy of the U.S. Government that prohibits funding for foreign NGOs that perform or promote abortion as a method of family planning in USAID recipient countries, or that provide financial support to another foreign NGO that does. The policy applies not only to primary recipients of applicable foreign assistance but also to foreign NGO subrecipients.

### When has the Mexico City Policy been implemented?

The Mexico City Policy was first introduced by the Reagan Administration as a policy statement delivered at the second session of the United Nations International Conference on Population in Mexico City in August of 1984.<sup>3</sup> The policy was first implemented the following year.<sup>4</sup> Since then, the Mexico City Policy has been rescinded by Democrat presidents and

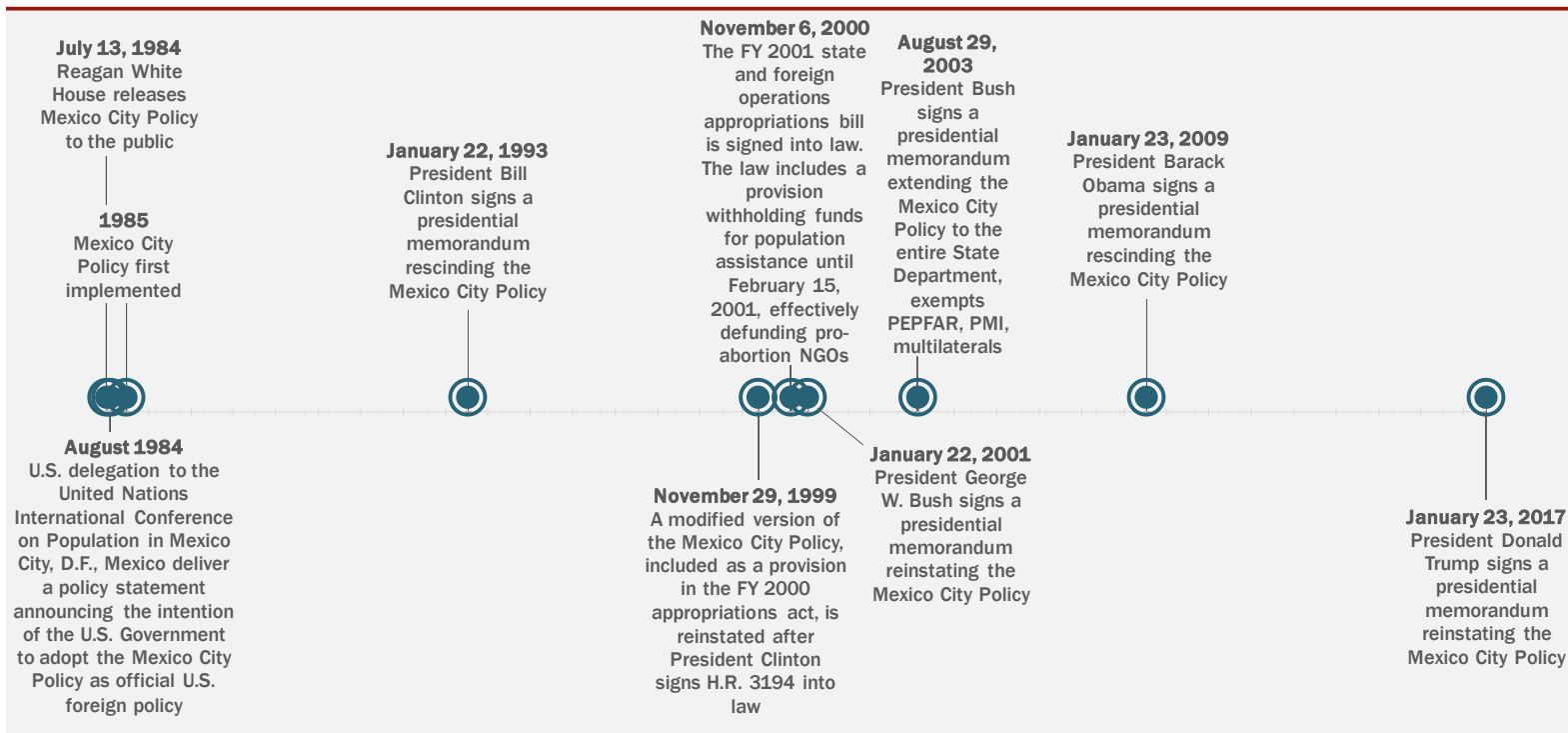
reinstated by Republican presidents via presidential memorandum. Congress has only reinstated the Mexico City Policy once when a modified version of the policy was included in the state and foreign operations appropriations act for the 2000 fiscal year.<sup>5</sup>

### What does it mean to perform or promote abortion as a method of family planning?

Administrations that have implemented the Mexico City Policy have chosen to interpret “abortion as a method of family planning” to include all abortions except those committed in cases of rape, incest, or where the life of the mother would be at risk if the pregnancy was brought to term. Since the Bush (43) Administration, post-abortion care has also been specifically exempted.

To perform an abortion means to operate at least one facility where abortions are performed. Promoting abortion includes, but is

## Mexico City Policy Timeline



not limited to, providing counseling services that in any way suggest abortion as method of family planning, lobbying or advocating for the legalization of abortion or for abortion “access,” advertising through any form of media or otherwise about the availability or purported benefits of abortion, or by providing abortion referrals.

### How is the Mexico City Policy enforced?

Prior to receiving a disbursement, foreign NGOs recipient of applicable funding are required to certify that they will not perform or promote abortion as a method of family planning. Domestic NGOs are required to obtain this certification from foreign NGO subrecipients and to monitor them for compliance with the Policy. USAID reserves the right to review subrecipients for compliance, request relevant documents, and initiate investigations. Organizations that fail to comply with the Policy are subject to award termination and are

required to return the amount of the award expended on prohibited activities. Subrecipients that submit false certifications are required to refund the entire sum of the award received.

### Is the Mexico City Policy constitutional?

Yes. The Mexico City Policy has been challenged numerous times, but federal and appellate courts have ultimately sided with the Government every time a case has been brought against it. In *Center for Reproductive Law and Policy v. Bush*, the most recent case brought against the Mexico City Policy in 2002, the court opined “the Supreme Court has made clear that the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds.”<sup>6</sup>

Section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. §2151b(b)) grants the President the ability to determine how family planning assistance is allocated:<sup>7</sup>

*“the President is authorized to furnish assistance, on such terms and conditions as he may determine, for voluntary population planning.”<sup>8</sup>*

A similar subsequent provision in Section 104 appears to grant the President the ability to also apply conditions on health assistance in general:

*“the President is authorized to furnish assistance, on such terms and conditions as he may determine, for health programs.”<sup>9</sup>*

### How is the Trump Policy is different from previous versions of the Policy?

All previous versions of the Mexico City Policy restricted family planning assistance (formerly referred to as “population assistance”) disbursed through USAID. President Bush (43) extended the applicability of the Policy to funds furnished by the State Department apart from USAID.<sup>10</sup>

The new Trump Policy, now called the Protecting Life in Global Health Assistance Policy, is applicable not only to family planning assistance but to global health assistance generally. The Policy is furthermore applicable not only to USAID and the State Department, but to all departments and agencies involved with furnishing such assistance.

While Congress has appropriated about \$575 million for family planning assistance since 2012, the new policy will apply to a wider array of funds totaling approximately \$8.8 billion in global health assistance.<sup>11</sup> As a result, the scope of the new Policy will be significantly greater than under previous versions of the Policy.

<sup>1</sup> Executive Office of the President. Memorandum of January 23, 2017, The Mexico City Policy. *Federal Register* 82, no. 15 (Jan 25, 2017): 82 FR 8495.

<sup>2</sup> USAID. *Standard Provisions for Non-U.S. Nongovernmental Organizations*. 303mab\_030217. partial revision: Mar 2, 2017. Document is the primary source for this Policy provisions outlined in this publication. Most recent policy in effect prior to May 15, 2017.

<sup>3</sup> White House Office of Policy Development. “US Policy Statement for the International Conference on Population.” *Population and Development Review* 10, no. 3 (1984): 574-579.

<sup>4</sup> *DKT Memorial Fund LTD v. Agency for International Development*. 630 F. Supp. 238 (D.C.C. 1986).

<sup>5</sup> *Consolidated Appropriations Act, 2000*, Public Law 106-113, Sec. 599D. 113 STAT. 1501A–130-132.

<sup>6</sup> *Center for Reproductive Law and Policy v. Bush*. 304 F.3d 183 (2d. Cir. 2002).

<sup>7</sup> *Planned Parenthood Federation of America Inc v. Agency for International Development*. 915 F.2d 59 (2d. Cir. 1990).

<sup>8</sup> 22 U.S.C. §2151b(b)

<sup>9</sup> 22 U.S.C. §2151b(c)(1)

<sup>10</sup> Executive Office of the President. Memorandum of August 29, 2003, Assistance for Voluntary Population Planning. *Federal Register* 68, no. 170 (Sep 3, 2003): 68 FR 52323.

<sup>11</sup> Abbamonte J, “State Department Announces New Plan to Dramatically Expand Mexico City Policy, Defund Pro-Abortion Organizations,” available at: <https://www.pop.org/state-department-announces-new-plan-to-dramatically-expand-mexico-city-policy-defund-pro-abortion-organizations/>.