

July 28, 2023

## PEPFAR Extension Act of 2018: Expiring Authorities

Since the 108<sup>th</sup> Congress (2003-2004) enacted legislation to authorize multiyear funding for international HIV/AIDS, tuberculosis (TB), and malaria programs, including the President's Emergency Plan for AIDS Relief (PEPFAR), successive Congresses have debated extending some of those authorities. While most PEPFAR-related provisions are authorized in statute without expiring authorities, the 118<sup>th</sup> Congress is currently considering whether to extend PEPFAR-related provisions in the PEPFAR Extension Act of 2018 (P.L. 115-305) that are set to expire on September 30, 2023.

Whereas the PEPFAR program was the George W. Bush Administration's clarion call for confronting the global HIV/AIDS crisis, Congress has used a series of laws, as described below, to outline its vision on how the United States should fight HIV/AIDS worldwide. This In Focus describes how these acts shape U.S. international HIV/AIDS assistance, including PEPFAR.

### PEPFAR-Related Legislation

Authorization for PEPFAR activities is provided through a number of acts, as described below. None of the acts authorize PEPFAR explicitly, rather they authorize support for international HIV/AIDS assistance. The acts outline congressional priorities on how this aid is to be provided.

**The Leadership Act.** In January 2003, President George W. Bush announced PEPFAR, the largest bilateral HIV/AIDS program in the world. Later that year, Congress enacted the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Leadership Act), P.L. 108-25, which authorized \$15 billion to be spent from FY2004 to FY2008 on bilateral and multilateral HIV/AIDS programs under the PEPFAR umbrella, as well as tuberculosis (TB) and malaria programs. The act included language that instructed how the funds were to be spent, listed program goals and targets, and authorized the establishment of the Global AIDS Coordinator and the Office of the Global AIDS Coordinator (OGAC). The Global AIDS Coordinator determines how PEPFAR funds are to be distributed to the implementing agencies and certifies that congressional directives, such as those related to U.S. contributions to the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund), are followed.

**The Lantos-Hyde Act.** In 2008, Congress enacted the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Lantos-Hyde Act), P.L. 110-293, which amended the Leadership Act to authorize the appropriation of \$48 billion for global HIV/AIDS, TB, and malaria efforts from FY2009 to FY2013. Among other things, the Lantos-Hyde Act (primarily through amendments to the Leadership Act) created frameworks for

how the funds should be spent and established program goals and targets.

**PEPFAR Stewardship Act.** In 2013, Congress enacted the PEPFAR Stewardship and Oversight Act of 2013, P.L. 113-56. Unlike its predecessors, this act did not authorize a specific appropriation for global HIV/AIDS, TB, and malaria programs. It focused primarily on enhancing oversight for related programs; preserving requirements to apportion 10% of HIV/AIDS funds for orphans and vulnerable children (OVC); mandating that more than half of related funds be spent on HIV/AIDS treatment and care; and requiring that at least 50% of prevention funds be used for activities that promote abstinence, delay of sexual debut, monogamy, fidelity, and partner reduction.

**PEPFAR Extension Act of 2018.** On November 13, 2018, the House passed H.R. 6651, the PEPFAR Extension Act of 2018. The bill was agreed to in the Senate on November 28 and presented to the President on November 30. President Donald J. Trump signed the bill into law on December 11, 2018. The act did not authorize specific appropriations levels, but it extended several provisions of the prior acts through September 30, 2023, including those requiring

- the Inspectors General of the Department of State, Broadcasting Board of Governors, HHS, and USAID to jointly coordinate annual plans for oversight activities;
- U.S. Global Fund contributions not to exceed 33% of all contributions received and allowing withholding portions of those contributions;
- more than half of U.S. international HIV/AIDS appropriations be used for treatment of HIV/AIDS and other associated opportunistic infections, as well as nutritional support and medical care for people living with HIV/AIDS; and
- at least 10% of bilateral HIV/AIDS funds be used on care and support for orphans and vulnerable children.

In addition, a provision requiring the Global AIDS Coordinator to publish annual reports on HIV/AIDS spending by the U.S. government, the Global Fund, and governments in partner countries was extended through 2024.

### Selected Enduring Provisions

The overall framework of U.S. international HIV/AIDS assistance, as presently provided through PEPFAR, is enacted in law mostly without sunset provisions. As a result, these provisions remain in effect without the need for periodic reauthorization. They include the following:

- **Authorization of Global HIV/AIDS Assistance.** Section 104A of the Foreign Assistance Act of 1961, P.L. 87-195, as amended by the Leadership Act,

permanently authorized appropriations for bilateral and multilateral global HIV/AIDS programs.

- **The Global AIDS Coordinator.** Section 1 of the State Department Basic Authorities Act of 1956, P.L. 84-885, as amended by the Leadership Act, permanently authorized the Global AIDS Coordinator position and detailed the planning, coordination, and oversight duties of the Coordinator, including the transfer and allocation of funds to implementing federal agencies.
- **The “Conscience Clause.”** Section 301(d) of the Leadership Act specified that organizations that are eligible to receive assistance under the FAA for bilateral HIV/AIDS assistance shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS or to participate in a prevention method or treatment program for which the organization has religious or moral objection. The Lantos-Hyde Act amended the Leadership Act to specify that such organizations shall not be discriminated against in the solicitation or issuance of federal funding for bilateral HIV/AIDS assistance.

### Issues Facing Congress

Congress is considering whether to extend provisions in the PEPFAR Extension Act that are set to expire (see **Table 1**).

Key debates related to reauthorization include questions on

- whether current restrictions on PEPFAR-related funds are sufficient to prevent them from being used to support abortions;
- whether funds for children orphaned by and vulnerable to HIV/AIDS should be (1) reallocated given the considerable reduction in this population (due, in large part, to parents living longer with access to antiretroviral treatment gained through PEPFAR and other global HIV/AIDS programs), or (2) expanded to include orphans who have aged out (over 17 years old) and are no longer eligible for OVC-specific programming.
- whether to authorize fuller flexibility of funds to allow PEPFAR to (1) address co-morbidities such as noncommunicable diseases (as people who are HIV-positive continue to access antiretroviral treatment, they face increased risk of diseases associated with longer life spans, such as stroke, heart disease, and cirrhosis), and (2) provide targeted assistance aimed at future pandemic preparedness, response, and resilience. The State Department and other groups have reported that PEPFAR-funded clinical care platforms, laboratories, detection surveillance systems, supply chains, and health information systems were used during the peak of the COVID-19 pandemic to detect, control, and respond to outbreaks.

**Table 1. Authorities in the PEPFAR Extension Act of 2018 Set to Expire in 2023 or 2024**

Section and Title	Summary of Language	Date of Expiration
<b>Sec. 2 (1) Inspectors General And Annual Study</b> amends 101(f)(1) of the Leadership Act	Directs the Inspectors General of the Department of State and Broadcasting Board of Governors, the Department of Health and Human Services, and the U.S. Agency for International Development to jointly develop annually coordinated plans for overseeing global HIV/AIDS, TB, and malaria programs.	September 30, 2023
<b>Sec. 2(2)</b> amends Sec. 101(g) of the Leadership Act	Directs the Global AIDS Coordinator to annually complete a study of treatment providers, including a description of the per-patient cost of providing treatment and care for people with HIV/AIDS, human and fiscal resource requirements for HIV/AIDS programs, and spending by the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund, or the Fund) and by partner countries.	September 30, 2024
<b>Sec. 3(1)(A)(i) Participation in the Global Fund to Fight AIDS, Tuberculosis, And Malaria</b> amends Sec. 202(d)(4)(A)(i) of the Leadership Act	Prohibits U.S. contributions to the Global Fund from exceeding 33% of all funds donated to the Fund.	September 30, 2023
<b>Sec. 3(1)(A)(ii)</b> amends Sec. 202(d)(4)(A)(ii) of the Leadership Act	Requires the Department of State to withhold contributions to the Fund commensurate with the amount the Fund provided to a country that the President determined “repeatedly provided support for acts of international terrorism.”	September 30, 2023
<b>Sec. 3(B)(ii)</b> amends Sec. 202(d)(4)(A)(iv) of the Leadership Act	Permits any amounts withheld from the Global Fund to be used for bilateral HIV/AIDS, TB, and malaria programs.	September 30, 2023
<b>Sec. 3(2)</b> amends Sec. 202(d)(5) of the Leadership Act	Authorizes withholding 20% of Global Fund contributions until the Secretary of State certifies that certain reporting and evaluation requirements are met.	September 30, 2023
<b>Sec. 4(1) Allocation of Funds</b> amends Sec. 403(b) of the Leadership Act	Requires that at least 10% of funds appropriated for bilateral HIV/AIDS programs be expended for programs supporting orphans and vulnerable children (OVC) affected by HIV/AIDS.	September 30, 2023
<b>Sec. 4(2)</b> amends Sec. 403(c) of the Leadership Act	Requires that more than half of funds appropriated for bilateral HIV/AIDS programs be expended on the provision of treatment, care, and nutritional support for people living with HIV/AIDS.	September 30, 2023

**Source:** Created by CRS from P.L. 115-305, the PEPFAR Extension Act of 2018.

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