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From: Lerner, Renee
Date: Tuesday, February 17, 2004 5:06 PM
To: 'paula.stannard@hhs.gov'; 'jgardner@usaid.gov'
Subject: OLC's advice on grant announcements
Attachments: OLC on HHS, USAID funding.doc

Dear Paula and John,

Attached is OLC's advice on HIV/AIDS and trafficking grant announcements. [REDACTED]

[REDACTED] Thanks very much. Of course please call if you have any questions.



OLC on HHS, USAID
funding.doc ...

Renee

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**Constitutionally Permissible Funding Restrictions
for Sex Trafficking and HIV/AIDS Prevention**

OLC has considered the constitutional implications of the following funding restrictions in the Trafficking Victims Protection Reauthorization Act (TVPRA), the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act (USLAHATMA), and the Consolidated Appropriations Act:

(1) restrictions on the use of program funds, which require (with a minor difference between TVPRA and USLAHATMA) that program funds not be used to promote, support, or advocate the legalization or practice of prostitution, *see* 22 U.S.C. § 7110(g)(1) (as added by TVPRA § 7(7)); USLAHATMA § 301(e);

(2) organization-wide restrictions, which would require an organization receiving funds either to refrain from promoting prostitution or its legalization, *see* 22 U.S.C. § 7110(g)(2) (as added by TVPRA § 7(7)), or to have a policy explicitly opposing prostitution and sex trafficking, *see* USLAHATMA § 301(f); and

(3) a restriction on what may be said when an organization wants to provide information about the use of condoms as part of a project or activity funded by the Consolidated Appropriations Act, *see* Pub. L. No. 108-199, Div. D, Title II (2004).

In the limited time available to us, we have not been able to conduct a comprehensive analysis; but we have reached the following tentative views, which might need to be altered after further analysis:

- With regard to category (2), the organization-wide restrictions, which would prevent or require certain advocacy or positions in activities completely separate from the federally funded programs—
 - cannot be constitutionally applied to U.S. organizations. _____
 - can be constitutionally applied to foreign organizations _____ when they are engaged in activities overseas. _____

