

POLICY *Analysis*

Center for Family and Human Rights

Five Problems with the WEEE Act

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The economic empowerment of women around the world is one of USAID's priorities. There is much to support in the Women's Entrepreneurship and Economic Empowerment Act of 2018, H.R. 5480 and S. 3247 (WEEE Act) to expand women's access to financial resources and markets. But there is also cause for concern.

The proposed legislation would codify more than just economic policies. It would also enact into law a mandate that enshrines and preserves an elaborate suite of gender policies adopted by USAID during the Obama administration to streamline "gender integration" and "gender analysis" at the agency at all stages of the USAID program cycle.

Legislators should challenge the inclusion of this overbroad bureaucratic mandate and find ways to improve the [WEEE Act](#). These gender requirements are not directly germane to achieving the goal of women's economic empowerment, they are not necessary as a legal matter for USAID to conduct business, and could have momentous unintended consequences for all USAID programming.

Below are five ways in which the WEEE Act is problematic and can be improved.

1. The WEEE Act will codify the gender policies adopted by USAID during the previous administration and make it harder for the Trump administration to modify them.

Section 3 of the WEEE Act would give normative backing to an intricate gender vetting process the Obama administration set in place at USAID to design and implement policies, programs and grants overall, not just in relation to microfinance and women's economic empowerment. It would effect all USAID programming without exception.

Section 3(b) of the Act will make "gender integration" and "gender-analysis" system-wide USAID requirements by law. Section 3(a) and (c) outlines the substantive goals of gender integration and gender analysis. Pursuant to this bureaucratic mandate, any policy, grant, or program at USAID must undergo gender analysis at all stages of planning, implementation, and monitoring.

Section 3 of the WEEE Act codifies the principal elements of the already operational “[USAID Gender Equality and Female Empowerment Policy](#)” issued during the Obama administration. This gender policy has been further fleshed out in over twenty-five USAID gender policies. USAID’s internal guidance, [ADS Chapter 205](#) on “Integrating Gender Equality and Female Empowerment in USAID’s Program Cycle” (last updated on 04/27/2017), makes the Obama administration’s gender policy operational throughout USAID programming and lists all the normative documents that guide gender integration and gender analysis within the agency.

The WEEE Act is giving a normative backbone to the ADS Chapter 205 operational guidance. It is this operationalized gender policy that will be indirectly enacted into law through the WEEE Act, as can be clearly seen by the language adopted in the WEEE Act:

- The language codified in Section 3(a) on the overall goals of U.S. development cooperation is taken verbatim from the USAID Gender Equality and Female Empowerment Policy section on “Outcomes” (p. 10), which is made operational in ADS Chapter 205 operational guide (p. 10).
- The language codified in Section 3(b) on actions to advance gender equality “throughout the program cycle” is taken verbatim from the USAID Gender Equality and Female Empowerment Policy section on “Operational Principles” (p. 11); and the mandate to use “standard indicators” enshrines the approach to indicators in ADS Chapter 205 (p. 27-28).
- The language codified in Section 3(c), defining gender analysis is based on the description of gender analysis in the USAID Gender Equality and Female Empowerment Policy (p. 12) and taken verbatim from the ADS Chapter 205 (p.10).

In practice, gender integration and gender analysis mean that every USAID bureau, operating unit, and U.S. embassy must have gender specialists on hand at every stage of USAID program design, implementation, and monitoring. This empowers USAID gender staff to impose myriad conditions based on the vague and overbroad policies that are part of the USAID’s gender suite and it will make it harder for the Trump administration to change or replace the preceding administration’s gender policies.

Once enacted, the WEEE Act will be harder for the Trump administration to attempt changes to these Obama administration gender policies. They will be defended as statutory requirements by USAID staff. In light of this, the fact that the proposed legislation tracks so closely the Obama-era gender policy makes the case for reassessing the language of the WEEE Act even stronger.

In effect, this administration will be held accountable for implementing its predecessor’s policies. The WEEE Act has a requirement in Section 5(a) for the Administrator of USAID to “provide a briefing and submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the implementation of this Act” within a year of its enactment.”

2. Gender integration and analysis can be used to stop faith-based organizations (FBOs) and organizations that object to abortion from partnering with USAID because of a sexual and reproductive health mandate.

It is ironic that the Trump Administration withdrew the HHS abortion and contraception mandate of the Affordable Care Act here at home, while at the same time USAID has a similar mandate for operations abroad. In the same vein, the Protecting Life in Global Health policy of the Trump administration prohibits U.S. taxpayer funding for groups that perform or promote abortion as a method of family planning, yet USAID gender policy can be used to stop FBOs and organizations who object to abortion and contraception from partnering with USAID.

ADS Chapter 205 describes in detail how gender must be integrated throughout the USAID program cycle. At the outset it lists the principal documents that must guide gender analysis (ADS Chapter 205, p. 4). The documents include sexual and reproductive health and LGBT components. Among these are the “United States Global Strategy to Empower Adolescent Girls”, the “United States Strategy to Prevent and Respond to Gender-Based Violence Globally”, the “USAID LGBT Vision for Action: Promoting and Supporting the Inclusion of Lesbian, Gay, Bisexual and Transgender Individuals”, and the “USAID Implementation of the United States National Action Plan on Women, Peace, and Security.”

These documents are listed as “external” and “internal” mandatory references. And USAID bureaus and operational units have wide discretion in carrying out the gender analysis in light of this normative guidance. They can ultimately decide the gender components of policies, programs, and grants. Because reproductive health and LGBT components are included in the overarching policies that guide gender analysis, USAID staff can create mandates on the subject of abortion, contraception, and LGBT issues for any organization wishing to partner with USAID.

At least one faith-based organization is reported to have decided to turn down a USAID grant that was already approved because the gender requirements of USAID violated their sincerely held religious beliefs about abortion, contraception, and LGBT issues.

3. There is a danger that “gender analysis” makes equality of outcomes, as opposed to equality of opportunity, the benchmark for measuring women’s equality.

If the Congress mandates gender analysis, legislators must ensure the objective of the gender analysis is to achieve equal opportunities and access for women, and not equality of outcomes.

The purpose of gender analysis should be to assess the extent to which women are the able to participate in all spheres of social, economic, and public life on an equal basis with men. It should take care not to undermine or influence the choices of women on whether to participate or not in public life. The desired end goal of the Act must be to guarantee the equal dignity of men and women by providing them equal opportunities and free choice, not a rigid gender parity target.

The international feminist gender policies that inspired the Obama administration's gender policies blur the line between ensuring women's equal access to opportunities and complete parity of outcomes, including through gender quotas. Unfortunately, this is the approach of the Obama administration's gender policies and that the WEEE Act codifies.

Section 3(a)(1) of the WEEE Act makes "to reduce gender disparities in access to, control over, and benefit from economic, social, political, and cultural resources, wealth, opportunities, and services" the first overarching goal of U.S. gender equality policy. While the goal includes language on "access," which would imply securing equality of opportunity, it also includes language on control and benefit which can be interpreted as both requiring equal opportunities for women and men, as well as gender parity in outcomes.

And the definition of "gender analysis" in Section 3(c)(2) of the Act makes the end point of gender analysis the formulation of policies and programs that "narrow gender gaps." This can be interpreted as making achieving numerical gender parity between men and women in all spheres of life the goal of gender analysis.

This is because adopting "reducing gender disparities" and "narrowing gender gaps" as the objective of gender policies would by implication codify a quota for women's participation that continually shifts until gender parity is achieved. The only way to avoid this reading of the WEEE Act is to interpret this Section 3(c)(2) language on "narrowing gender gaps" as a vague and aimless mandate.

This ambiguity and ambivalence originate in international policy. UN Women [defines](#) "gender gaps" as "any disparity between women and men's condition or position in society." It is this kind of gender equality that the Act is seeking to codify. This ambiguity is further evident in the Obama-era policies themselves.

For example, the USAID Policy on Gender Equality and Women's Empowerment follows the lead of UN Women in this regard. It features eliminating "gender gaps" prominently in its guiding principles (p. 1-2) and lists unacceptable gender gaps in several areas of USAID activity including, education, employment, and politics throughout.

When it comes to the gender gap in employment and earnings the USAID policy states:

Increased participation has not translated into equal employment opportunities or equal earnings for men and women. Women and men tend to work in very different parts of the economy with little change over time, even in higher income countries. (USAID Policy on Gender Equality and Women's Empowerment, p. 8).

In light of this, Section 3(c) of the WEEE Act which mandates gender analysis in terms of "paid employment" and "care for family members" suggests a mandate to micromanage households' distribution of care work in order to achieve parity of outcomes in workforce participation or earnings between men and women. This could debase unpaid care in the home as less valuable than paid care for someone outside one's own family.

In the context of economic empowerment, women's equal access to the means of economic empowerment is not the same as attempting to ensure that women's use of economic instruments is

indistinguishable from that of men as a goal. It is essential that women have access to credit, land ownership, employment, and are that they are able to inherit wealth without regard to their sex. It is, however, not accurate to assume that women's overall equal participation in the workforce is inherently empowering.

If section 3 of the WEEE Act is retained at all, it is essential to positively mandate that USAID make equality of opportunity the operative principle of gender analysis, and not equality of outcomes. No ambiguity should be acceptable that would allow USAID to interpret the WEEE Act as mandating gender parity and gender quotas.

It is not sufficient to remove sub-section 3(c) on the definition of "gender analysis" from the WEEE Act to eliminate the possibility of gender parity and gender quotas becoming USAID measurements of equality. The overall direction of USAID on gender policies is already set, and confirmed in Section 3(a) of the bill. If any part of section 3 is retained at all, it should be made clear and in an unambiguous way that gender parity is not the desired end goal of gender integration and gender analysis.

4. The current use of the term "gender" by USAID diverts resources and program focus away from women and girls to less accepted policy areas.

It is essential that programs meant to help women and girls are clear about the meaning of the term gender. New uses of the term gender have proliferated in recent years with the implementation of laws and policies pertaining to LGBT issues. This unfairly disperses the hard-won gains of the women's movement with regard to equal opportunity.

It is now the case that under the rubric of "gender" the women's agenda is deliberately diluted to include men, individuals who identify as transgender, or those who identify as part of the LGBT community. This has been the case under the USAID gender policies adopted under the Obama Administration as with the "USAID LGBT Vision for Action: Promoting and Supporting the Inclusion of Lesbian, Gay, Bisexual, and Transgender Individuals."

Gender has to do with "social norms" and "power relations," and other vague and fluid notions related to social norms. For Example the USAID Policy on Gender Equality and Women's Empowerment does not limit gender analysis to assessing the needs of women and girls. It adopts a very open-ended notion of gender and gender analysis.

"Because males and females are not homogenous groups, gender analysis should also to the extent possible disaggregate by income, region, caste, race, ethnicity, disability, and other relevant social characteristics and explicitly recognize the specific needs of young girls and boys, adolescent girls and boys, adult women and men, and older women and men." ([USAID Policy on Gender Equality and Women's Empowerment](#), p. 12).

This introduces an unacceptable uncertainty in how USAID money is spent, and inevitably leads to partner with groups who are interested in promoting ideological concepts as well as, and in some cases rather than, helping a specific women and girls.

A salient example of this mission creep is the way, under the guide of “gender”, efforts to eradicate violence against women were expanded by the Obama administration to include a vague and ever-expanding list of forms of “gender-based violence” for dedicated programming, among them “violence against lesbian, gay, bisexual, and transgender individuals.” (United States Strategy to Prevent and Respond to Gender-based Violence Globally, p. 6)

This gender approach diverts resources to new programs that are not directly focused on women and do not enjoy the same political support at home and abroad, as does programming that targets women and girls.

And in addition to siphoning resources away from women’s empowerment, it is not cost-effective. For example, data, metrics, and time-tested policies have existed for decades to address violence against women. They are not available for the entirely new and overbroad notion of “gender-based violence.”

The term “gender” has been defined twice in the international context as meaning men and women. These definitions appear in the outcome documents of the 1995 Fourth World Conference on Women and the 1998 Rome Statute of the International Criminal Court. Yet the term is still controversial in international negotiations precisely because there is the danger of misinterpretation.

Following those conferences, the term “gender” has been used in amendments to the 1961 U.S. Foreign Assistance Act. But it has never been understood to have this multiplicity of meaning that the Obama administration gender policies added to it.

To avoid this kind of wasteful mission creep in all USAID programming, at a minimum the term “gender” must be defined to only refer to men and women throughout all the 1961 U.S. Foreign Assistance Act and all U.S. development policies. And where possible, it is preferable to refer directly to “women”, or “women and girls”, so as not to render them invisible in the very legislation and policies intended to improve their lives.

5. Data is not disaggregated by gender, but by sex.

One concrete concern is in the proposed amendments to the Foreign Assistance Act of 1961 in section 4(c), which calls for “data disaggregated by gender” in three instances.

This is problematic because, as a statistical matter, data cannot be disaggregated by gender, only by sex. As the United Nations Department of Economic and Social Affairs’ Statistics Division explains in their 2016 handbook, [“Integrating a gender perspective into statistics”](#):

The term “gender” has often been wrongly used in association with data. “Gender disaggregation” or “data disaggregated by gender” are incorrect terms. Gender statistics are disaggregated by sex, an individual-level characteristic commonly recorded in censuses, surveys and administrative records, not by gender, a social concept relevant at the level of a population group.

It should be noted that the phrase “data disaggregated by gender” has been included once in an amendment to the 1961 Foreign Assistance Act in section 104A(e)(2)(E)(iv). This reference should be corrected to reflect accurate statistics and definitions.

Additionally, reference to disaggregated data in the proposed legislation should be amended to say “sex” rather than “gender” to ensure consistency with international standards and avoid creating confusion as to the relevant categories.

While the concept of “disaggregation by gender” is scientifically incorrect, it is a simple error to fix by the substitution of “disaggregation by sex,” which clearly contains the intended meaning of the original phrase. We would strongly advise against any effort to otherwise amend the language to include the broader concept of “gender statistics,” which include but are not limited to sex disaggregation. This would open up the legislation to a wide variety of interpretations, including nonbinary concepts of gender, which would create confusion in implementation and risk directing focus away from the economic empowerment of women, which is the goal of this legislation.

Recommendations

Codifying the Obama administration’s gender policies would institutionalize a sweeping bureaucratic mandate to implement international feminist policy on which the American people have never had a say and could violate their conscience. At a minimum, legislators should consider the following:

- Add a conscience and religious freedom clause in the WEEE Act amending the 1961 Foreign Assistance Act and covering all U.S. development activities. No religious group or any group that objects to controversial abortion-related or LGBT components of USAID gender programming may be turned away from partnering with USAID because of their religious beliefs or their position on abortion, contraception, or LGBT issues.
- Modify section 3 of the WEE Act to ensure it mandates equality of opportunity as the objective of gender policies, gender integration, and gender analysis, as opposed to equality of outcome.
- Add a definition of the word gender applicable to the entirety of the 1961 Foreign Assistance Act and covering all U.S. development activities so as to limit the meaning of the term “gender” to “men and women,” and, where applicable, “boys and girls.”
- In Section 4(c) of the WEEE Act, on monitoring replace “gender disaggregated” with “sex disaggregated” and make the same replacement in section 104A(e)(2)(E)(iv) of the 1961 Foreign Assistance Act.



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