



ADS Chapter 303

Grants and Cooperative Agreements to Non-Governmental Organizations

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POC for ADS 303: Anne Sattgast, (202) 916-2623, asattgast@usaid.gov

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ADS 303 – Grants and Cooperative Agreements to Non-Governmental Organizations

303.1 OVERVIEW

Effective Date: 12/23/2019

This chapter describes the Agency's internal guidance, policy directives, required procedures, and standards for the award and administration of USAID grants and cooperative agreements to:

- Institutions of higher education,
- Hospitals,
- Nonprofit non-governmental organizations (NGOs), and
- Commercial organizations.

USAID provides assistance to U.S. or non-U.S organizations, individuals, nonprofits, and for-profit entities. Authorizing legislation (including the [Foreign Assistance Act of 1961, as amended](#)), other statutes, Government-wide directives and regulations, and Agency policies specify the eligibility requirements for individual assistance programs. The Agency has identified its corporate priorities for, and approach to, assistance in the [USAID Acquisition and Assistance Strategy](#).

303.2 PRIMARY RESPONSIBILITIES

Effective Date: 08/18/2020

a. The **Bureau for Management, Office of Acquisition and Assistance (M/OAA)** develops and interprets policy on behalf of USAID for the award and administration of grants and cooperative agreements. M/OAA carries out this responsibility in accordance with the requirements of [2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) and USAID's implementing regulation [2 CFR 700 USAID Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#), and this ADS chapter.

b. The **M/OAA Director** is also the Assistance Executive and coordinates all matters that OMB or USAID regulations govern or which may require OMB approval. The M/OAA Director:

- Authorizes restricted eligibility, in accordance with **303.3.6.5**;
- Makes the final decision on the choice of implementing instrument in the event of a dispute between the requesting official and the Agreement Officer, in accordance with [ADS 304](#); and

c. The Agency Liaison

- Reviews information for the Catalog of Federal Domestic Assistance (CFDA) for completeness and accuracy and forwards the information to the Office of Management and Budget (OMB) for entry into the CFDA by the General Services Administration (GSA);
- Updates CFDA entries annually;
- Submits an annual crosswalk that references program transactions occurring during the year, such as additions, deletions, consolidations of programs, and changes to program titles;
- Assigns CFDA numbers; and
- Prepares the CFDA entry describing the Agency's general program description.

NOTE: The Chief of the Strategic Planning and Performance Division of the Bureau for Policy and Program Coordination (PPC/SPP/SPA) was serving as the Agency Liaison to the CFDA (see **303.3.5.1**). However, this office has been superseded by the establishment of the Office of the Director of Foreign Assistance. Details of the liaison function will be revised. For further information, contact PPC and M/OAA.

d. The Agreement Officer (AO) has legal responsibility for the award. Therefore, only the AO can take action on behalf of USAID to enter into, amend, or terminate an award. The AO is authorized this responsibility either by a warrant issued by the Director, M/OAA, or through a delegation by virtue of his or her position provided by:

- The Mission Director or other principal officer of a USAID overseas mission (see [ADS 103](#)),
- The Assistant to the Administrator for the Bureau for Humanitarian Assistance (AtA/BHA), or
- The directors of BHA offices, as re-delegated by the AtA/BHA (see [ADS 103.3.15](#)).

e. Prior to award, the Activity Planner (also referred to as Planner) ensures that an anticipated award reflects the project design and planning documentation prepared in accordance with [ADS 201](#) and [ADS 300](#) and supports the assistance objectives. The Planner:

- Ensures adequate notice and time is provided to the AO to compete and award an assistance instrument by using an annual A&A plan or by obtaining the AO's consent;
- Justifies an exception to eligibility, in accordance with this chapter and as directed by the AO, if eligibility is to be restricted;
- Provides the Agency Liaison with an annual update on the information in Catalog of Federal Domestic Assistance (CFDA) entries for which the Planner is responsible (see **303.3.5.1**);
- Complies with 22 CFR 216, Environmental Procedures, requirements during the design process;
- Manages the merit review of applications on behalf of the AO;
- Carries out elements of the pre-award survey and provides a technical analysis of specific costs when asked by the AO;
- Advises the AO whether an application is responsive to the published announcement and otherwise complies with established USAID Development Objectives;
- Determines the expected level of cost sharing, in accordance with specific program requirements and **303.3.10**;
- Processes all necessary request documentation for the AO to consider in awarding a grant or cooperative agreement to a selected applicant. This documentation includes advice on the programmatic aspects of the application, including the applicant's program description with clearly established goals that are realistic, measurable, and represent the highest objective that the recipient can be expected to achieve and for which the recipient will be held accountable;
- Helps the AO determine the potential recipient's level of technical and managerial competence; and
- Performs other duties, as requested by the AO, to ensure prudent management of assistance funds.

f. After award, the **Agreement Officer's Representative (AOR)**, as designated in writing by the AO, provides programmatic and administrative oversight of the assistance instrument. This authority is not re-delegable other than as specified in the AO's designation letter. The AOR ensures that USAID exercises prudent management over the award and monitors the recipient's progress in achieving the objectives of the

program description. The AOR:

- Maintains contact, including through site visits and liaison, with the recipient;
- Reviews and analyzes reports and monitors reporting requirements (see [ADS 540](#));
- Verifies timely performance;
- Ensures compliance with the terms and conditions of the award;
- Carries out all responsibilities in the schedule of the award as delegated by the AO and as noted under the “Substantial Involvement” section of Cooperative Agreements;
- Monitors the recipient's financial reports to ensure that the recipient makes progress toward meeting the required cost sharing, when applicable;
- Notifies the AO promptly of any developments that could have a significant impact on the recipient's performance;
- Prepares internal documents to support amendments to the award;
- Assists the AO in the review of proposed Branding Strategies and Marking Plans and monitors the execution of approved Marking Plans;
- Ensures all mitigative environmental measures and conditions in the award are implemented throughout the life of the award and that timely amendments are undertaken as needed with the relevant Bureau environmental officer approval in writing (see [ADS 204, Environmental Procedures](#));
- Monitors classified recipients' compliance with the security specifications included in their grants and cooperative agreements, and notifies the AO and the Office of Security of any problems or suspected noncompliance with those requirements (see [ADS 545, Information Systems Security](#), [ADS 565, Physical Security Programs \(Domestic\)](#), and [ADS 567, Classified Contracts and Awards Under USAID's National Industrial Security Program](#));
- Evaluates the recipient's program effectiveness at the end of the program, and produces a final report on the award for the AO; and
- Performs other duties, as requested or delegated by the AO, to ensure prudent management of assistance funds.

g. The **Office of the General Counsel (GC)** or the **cognizant Resident Legal Officer (RLO)** makes the final legal determinations on behalf of the Agency. USAID staff must refer all contacts from an applicant's or a recipient's lawyer to GC or the RLO. Staff must also consult GC or the RLO on significant policy matters.

h. **Assistant Administrators** approve termination of awards based on the decision that continued assistance would not be in the national interest of the United States. **The use of the term Assistant Administrator throughout this chapter refers to both an Assistant Administrator and an Assistant to the Administrator.**

i. The **Assistant Administrator, Bureau for Management**, or designee, makes the final decision on any appeals brought under [2 CFR 700.15](#), or the Mandatory Standard Provision entitled "Disputes and Appeals" when it involves non U.S. organizations.

303.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

303.3.1 Policy Directives

Effective Date: 12/26/2014

[2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#), establishes the requirements that the federal government agencies must follow when administering grants and cooperative agreements to U.S. non-governmental organizations. [2 CFR 700](#) is the Agency's regulatory implementation and supplement to **2 CFR 200**. **2 CFR 200** and **2 CFR 700** do not directly apply to foreign organizations (non-U.S. non-governmental organizations). However, USAID applies some of these regulations to non-U.S. non-governmental organizations through this ADS chapter and [ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations](#).

303.3.2 Required Procedures

Effective Date: 12/26/2014

USAID executes all assistance awards in accordance with [2 CFR 200](#) and [2 CFR 700](#). Additionally, Agency policies on specific topics can be found in other sections of the Code of Federal Regulations (CFRs) and the ADS 300 Series. When it is necessary to implement timely changes prior to a formal revision of Agency assistance regulations and policy, the Director, M/OAA will issue [Acquisition and Assistance Policy Documents \(AAPDs\)](#). M/OAA uses [Procurement Executive Bulletins \(PEBs\)](#) to issue guidance, best practices, reminders, and answers to frequently asked questions.

303.3.3 Type of Assistance Instrument

Effective Date: 12/23/2019

Assistance (grants or cooperative agreements) is used when the principal purpose of the relationship between USAID and the recipient is to transfer anything of value to the

recipient to carry out a public purpose of support or stimulation, as authorized by the [Foreign Assistance Act of 1961, as amended \(FAA\)](#). The AO is responsible for making the final decision on the selection of an acquisition or assistance instrument. For further guidance on the differences between assistance and acquisition (contracts), see [ADS 304, Selecting Between Acquisition and Assistance Implementing Instruments](#).

During the Planning Phase, the Activity Planner and the Agreement Officer make a determination on the duration and type of assistance instrument (see **303.3.14** and [ADS 201, Program Cycle Operational Policy](#)).

303.3.4 Exceptions and Deviations

Effective Date: 05/18/2020

When it is necessary to achieve program objectives under an award or when special circumstances make it in the best interests of the U.S. Government, USAID may pursue deviations or exceptions from:

- [2 CFR 200](#);
- [2 CFR 700](#);
- The policy directives and required procedures of this chapter;
- [ADS 303maa, Standard Provisions for U.S. Non-governmental Organizations](#);
- [ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations](#); or
- [ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#).

a. Approving Officials

- (1) [Awards to U.S. organizations](#). Consistent with [2 CFR 700.4, Exceptions](#), only the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, may approve an individual exception to [2 CFR 200](#) (no case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements), and may approve individual or class exceptions to [2 CFR 700](#) for USAID program specific assistance regulations (other than those which implement statutory and executive order requirements). The Office of Management and Budget (OMB) must approve any class exceptions to [2 CFR 200](#), other than those which implement statutory and executive order requirements. The Director,

M/OAA must approve individual and class deviations from the requirements of this chapter.

- (2) Awards to Non-U.S. organizations. The Mission Director with program responsibility for the assistance award may approve deviations on a case-by-case basis for an individual award. The Director, M/OAA, must approve all class deviations for assistance awards to non-U.S. organizations.

b. Procedure

- (1) The AO or the Planner/AOR may initiate a deviation request through an action memorandum to the appropriate approving official noted in **303.3.4(a)**.
- (2) The AO must clear the deviation request before it is submitted to the approving authority.
- (3) The AO or the Planner/AOR must consult with the Office of the General Counsel (GC) or the Resident Legal Officer (RLO) on all deviations. GC/A&A must clear the action memorandum before the AO or Planner/AOR submits it to the approving authority.
- (4) Before submitting the action memorandum, the requestor also must obtain written comments from M/OAA's Policy Division regarding the information provided to meet the requirements of **paragraph c.** of this section. M/OAA/P will respond within 10 working days. If more time is needed, M/OAA/P must alert the requestor and provide an estimate of when comments will be provided. The AO must maintain a copy of the comments submitted by M/OAA/P as part of the deviation request file.
- (5) If the deviation request involves the cost principles or the applicant's Negotiated Indirect Cost Rate Agreement, the AO must also obtain written comments from M/OAA's Contract Audit and Support Division (M/OAA/CAS), Overhead/Special Costs and Closeout Branch, before submitting the request to the approving official. M/OAA/CAS has 10 working days in which to respond. If more time is needed, M/OAA/CAS must alert the requestor and provide an estimate of when it will provide comments. If M/OAA/CAS does not provide comments within 10 working days or within the requested extension period, the requestor may treat the non-response as concurrence.
- (6) If the approving official does not approve the deviation request, the approving official should provide a written explanation to the requestor regarding why the request was not approved. If the requestor can revise the request to address the approving official's objections, the requestor

may do so and resubmit the request. The approving official's denial of a deviation request may not be appealed.

- (7) The requestor must provide a copy of each approved deviation request to M/OAA/P, and the AO must retain the approved deviation in the award file.

c. Content of a Deviation Request

Each deviation request must

- (1) List the name of the recipient and identify the grants or cooperative agreements affected. Include the dollar value of each award;
- (2) Identify the provision, policy, or procedure from which a deviation is necessary;
- (3) Provide a full description of the deviation and the circumstances in which it will be used;
- (4) Detail the reasons supporting the request, including any background information that contributes to a fuller understanding of the sought deviation;
- (5) Describe the intended effect of the deviation; and
- (6) State whether a previous deviation from the same requirement had been requested and, if so, the circumstances of the request and whether the approving official approved or disapproved the request.

(For an example, see [ADS 303sac, Sample Action Memorandum for Deviation.](#))

303.3.5 Public Notice and Advertising

Effective Date: 12/26/2014

- a. USAID has a responsibility to notify the public of its funding priorities in assistance programs (**2 CFR 200.202-203**). The Agency generally fulfills this responsibility by announcing assistance programs in the [Catalog of Federal Domestic Assistance](#) (CFDA) and at [Grants.Gov](#).
- b. As Office of Management and Budget policy requires (see [Office of Federal Financial Management Policy Directive on Use of Grants.Gov](#)), USAID must synopsise and post all funding opportunities and application packages to the **Grants.Gov** site except:

- (1) Assistance programs that are only published through an Development Objective CFDA entry;

NOTE: USAID, at present, does not publish assistance programs solely through CFDA entries;

- (2) Awards that USAID limits to non-U.S. organizations, and which will be for less than \$25,000; and
- (3) Awards for which eligibility is restricted to a single source in accordance with procedures in **303.3.6.5**.

ADS 303mae, USAID Policy Guidance on Posting Grant Opportunities and Application Packages on Grants.Gov, provides specific instructions for posting synopses and application packages to the **Grants.Gov** Web site.

303.3.5.1 Catalog of Federal Domestic Assistance

Effective Date: 06/01/2006

Pub. L. 95-220, 31 U.S.C. 6104 established the **Catalog of Federal Domestic Assistance (CFDA)** as the database for all Federal programs available to U.S. non-governmental organizations, individuals, educational institutions, and state and local governments. An individual or organization can search this database, find assistance programs, determine if an assistance program matches the individual or organization's requirements, and determine if the individual or organization is eligible for the assistance program. The individual or organization may then contact the office that administers the program and find out how to apply.

Use of the CFDA allows an individual or organization to find information in one location, instead of having to search through many different Federal Agency Web sites. All agencies of the U.S. Government, including USAID, must collect, coordinate, and submit information on all current Federal domestic assistance programs.

A Federal domestic assistance program is any program that provides assistance to a domestic profit or nonprofit corporation; institution or individual; a State or Territory; or, any county, city, or other local government subdivision. This includes programs that finance grants or cooperative agreements to U.S. recipients for activities abroad. It does not include programs that finance grants or cooperative agreements to non-U.S. recipients for activities abroad or for the acquisition or recruitment of personnel.

USAID satisfies the requirements of the Federal Program Information Act (Pub. L. 95-220) by publishing a general entry about its programs in the CFDA. This information must also be published in **Grants.Gov** and issued as Requests for Applications or Annual Program Statements.

If the Activity Planner wishes to submit an entry into the CFDA, the Activity Planner should send the information through the cognizant Bureau program office to the Agency Liaison.

303.3.5.2 Notice of Funding Opportunity

Effective Date: 12/23/2019

USAID primarily uses two types of Notices of Funding Opportunity (NOFO), a Request for Applications (RFA) and an Annual Program Statement (APS).

- a. An RFA is used when the intent is to provide assistance for an activity or methodology that supports or is in keeping with USAID's program objectives.

2 CFR 200.203(b) recommends that AOs make all NOFOs available for receipt of applications for at least 60 calendar days. AOs should provide longer response periods for sizeable activities or more detailed applications used to ensure high quality applications. An AO should not make an NOFO available for less than 30 days unless there are exigent circumstances supported by a written determination by the AO (see **2 CFR 200.203(b)**).

- b. An APS is used when USAID intends to support a variety of creative approaches towards developing methodologies to assess and implement development objective activities.

When used, USAID will publish an APS at least once a year, either with an open-ended response time or a closing date of at least six months after issuance.

303.3.5.3 Notice of Funding Opportunity Format

Effective Date: 12/23/2019

When issuing a NOFO, either an RFA or an APS, the AO must follow the established format in [Appendix I to Part 200 – Full Text of Notice of Funding Opportunity](#). A summary of the format is as follows:

- a. Section A, Program Description, contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. Specifically, the Program Description:
 - (1) Must describe the operating unit's funding priorities or the programmatic or focus areas in which the operating unit intends to provide assistance.
 - (2) Must include a statement identifying the authorizing legislation (generally the [Foreign Assistance Act of 1961, as amended](#)) and whether the award is subject to [2 CFR 700](#) and [2 CFR 200 – Uniform Administrative](#)

Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- (3) May include any program history.
 - (4) May include indicators of successful projects (e.g., if the program encourages collaborative efforts) and examples of projects previously funded by the Agency.
- b. Section B, Federal Award Information, provides sufficient information for a potential applicant to decide whether to submit an application. This section must include:
- (1) The estimated total amount of the program, the expected number of awards, and the financial range of the individual awards;
 - (2) The anticipated start dates and performance periods for new awards;
 - (3) Whether the award will be a grant or a cooperative agreement. If USAID expects to award a cooperative agreement, describe the intended substantial involvement by the Agency (see **303.3.11**); and
 - (4) Whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.
- c. Section C, Eligibility Information, addresses the considerations and factors that determine applicant or application eligibility for award. This section must:
- (1) Identify the types of entities that are eligible to apply. The AO must clearly identify in the NOFO whether the funding opportunity is open to all entities. If there are no restrictions on eligibility, this section must indicate that all potential applicants are eligible (see section **303.3.6** on Eligibility). If eligibility is restricted, the AO must state the types of entities that are eligible and include in the NOFO the rationale for why the restriction of eligibility is considered necessary. If eligibility is restricted to a single entity, a NOFO is not required. Also, include a statement to the effect that USAID encourages applications from potential new partners.
 - (2) Describe the cost sharing element. State explicitly whether cost sharing is required for the applicant to be eligible (see **303.3.10**), cost sharing is suggested (that is, voluntary) but not required, or cost sharing is not required.

When cost sharing is suggested and will be a factor in determining who will receive an award, the announcement must explicitly describe how cost

sharing will be considered as part of the review process. Do not use vague statements such as “cost sharing is encouraged.” If applicable, the announcement must clearly state any restrictions or special conditions regarding the types of costs that are acceptable for cost sharing (consistent with **2 CFR 200.306**), the NOFO must explicitly state it. This section must refer to Section D, which states any pre-award requirements for submission of documentation to verify commitments to meet cost sharing requirements. **Note that a fixed amount award cannot be used in a program that requires mandatory cost sharing** (see **2 CFR 200.201(b)(2)**).

- (3) State any limit on the number of applications an applicant may submit under the NOFO and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both.
- (4) If applicable, include any other eligibility criteria, i.e., criteria that will make an application or project ineligible for a Federal award. These criteria must be clearly stated and must include a reference to the regulation or policy that describes the restriction, as applicable (see **303.3.6.1(d) Multi-tiered Review**).

d. Section D, Application and Submission Information, must include:

- (1) Point of Contact Information, including the name, title, street address, e-mail, and phone number, so that an applicant may obtain from the POC any materials needed for the application or otherwise communicate with the POC regarding the application requirements.
- (2) Content and Format of Application Submission, must identify the required content of the application and forms or formats that an applicant must use. In accordance with [5 CFR 1320](#), which implements the [Paperwork Reduction Act](#), USAID may require no more than the original and two copies of any application. This section must include a statement directing the applicant to submit the SF-424 series, which includes the:
 - [SF-424, Application for Federal Assistance](#); and
 - [SF-424A, Budget Information – Non-construction Programs](#); and

This section must also address information that successful applicants must submit after notification of intent to make a Federal award but prior to actual award.

- (3) Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM). This section must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:
- (i) Be registered in SAM before submitting its application;
 - (ii) Provide a valid DUNS number in its application; and
 - (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

- (4) Submission Dates and Times for application submission must be identified. This section must also detail how USAID makes the determination that an application has been received in time, and consequences of late submission (see **303.3.6.6**).
- (5) Funding Restrictions. Notices must include information on funding restrictions to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity (see **303.3.30**), if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs). This section must include a statement regarding whether the award will or will not allow the reimbursement of pre-award costs.
- (6) The required certifications, assurances, representations, and other statements of the recipient found in [ADS 303mav](#) and the [ADS 303mba, Pre-Award Terms](#) (see **303.3.8**).
- (7) Other submission requirements. This might include the format of submission (paper or electronic) and where the applicant must submit the

application. If USAID authorizes electronic submission, advise what the applicant should do in the event of technical difficulties and provide a point of contact.

e. Section E, Application Review Information, must include:

- (1) The selection criteria and any subcriteria that USAID will use when reviewing applications, including an indication of their relative importance (see **303.3.6.3**). The selection criteria are distinct from eligibility criteria that are addressed prior to acceptance of an application. If the selection criteria vary in importance, the NOFO must specify the relative percentages, weights, or other means used to distinguish among them.
- (2) If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2 (see **303.3.5.2.c(2)**)), a clear statement of how USAID evaluates cost sharing as part of the review process (see **303.3.10**) must be included in the NOFO.
- (3) Review and Selection Process. The NOFO may indicate who reviews the applications (e.g., USAID personnel, representatives from the local American embassy, host governments, or private sector individuals) and note that the AO makes the final selection.
- (4) Anticipated Announcement and Federal Award Dates. This section is optional and intended to provide applicants information for planning purposes.

f. Section F, Federal Award and Administration Information, must include:

- (1) Federal Award Notices. This section must address what a successful applicant can expect to receive following selection. State that a notice of award signed by the AO is the authorizing document, whether USAID will provide it electronically, and to whom USAID will provide it. USAID may include a description of the form, the content of notifications to unsuccessful applicants, and whether requests for additional information will be considered from unsuccessful applicants.
- (2) A statement identifying how the award will be administered, including the applicable standard provision and any approved deviations from the **Standard Provisions**. For U.S. organizations, the solicitation must state that **2 CFR 700**, **2 CFR 200**, and [ADS 303maa, Standard Provisions for U.S. Non-governmental Organizations](#) are applicable. For non-U.S. organizations, the solicitation must state that [ADS 303mab, Standard Provisions for Non-U.S. Non-governmental Organizations](#) will apply.

USAID prefers that, instead of attaching complete copies of **2 CFR 200** and **2 CFR 700** to the NOFO, the NOFO direct applicants to the source (see **303.4** and **303.5**).

- (3) Reporting. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission of award reporting requirements. The types and frequency of financial and programmatic reports must be strictly limited to those detailed in 2 CFR 200 (For output or unit cost data the AO must refer to 2 CFR 200.328). Imposing the same reporting requirement on ten or more recipients has Paperwork Reduction Act, (5 CFR 1320), implications. When necessary, the AO must contact General Counsel or the cognizant Resident Legal Officer for guidance. Guidance on specific financial and programmatic reporting requirements that have met the requirements of the Paperwork Reduction Act and received OMB approval are found in Procurement Executive Bulletins.

Additionally, the AO must advise the Planner to use [ADS 540](#) for detailed guidance on the submission of copies of reports and other information to USAID's Development Experience Clearinghouse (DEC), when drafting the reporting requirements.

- (4) If program income is anticipated to be generated under the award, the AO must consider how that income will be treated under the award (see **2 CFR 200.307** or, for non-U.S. organizations, see the provision "Program Income").
 - (5) If the Administrator has provided a written determination for use of an additional or substitute logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative, identify the alternate branding and marking standards to be used in the award (see [2 CFR 700.16](#) or, for non-U.S. organizations, see the provision entitled "Marking and Public Communications Under USAID-Funded Assistance").
 - (6) A statement detailing how the Agency will ensure environmental soundness and compliance in design and implementation when required by the [22 CFR 216](#) determination.
- g. Section G, Federal Awarding Agency Contacts, must include points of contact (POC) for questions while the funding opportunity is open. In addition to the name and address of the POC, USAID may establish a generic e-mail address for inquiries.
 - h. Section H, Other Information, must include:

- (1) A statement that USAID reserves the right to fund any or none of the applications submitted, and
- (2) Any other relevant information such as related programs or other upcoming or ongoing funding opportunities.

303.3.5.4 Cancellation of Notice of Funding Opportunity

Effective Date: 07/22/2015

The cancellation of a Notice of Funding Opportunity (NOFO) costs the U.S. Government and applicants' time, effort, and money. USAID should cancel NOFOs only when cancellation is in the public interest. For example:

- (1) When the specific programmatic or focus areas are no longer within the Agency's mission or objectives.
- (2) When amendments to the NOFO would be of such magnitude that a new NOFO is desirable.

If USAID cancels a NOFO, USAID will return any applications it has received unopened and will issue a notice of cancellation, either posted electronically as a general notice or sent to all prospective applicants, or both. USAID staff must purge any electronic applications for a cancelled NOFO from primary and backup data storage systems.

The notice of cancellation must:

- (1) Identify the solicitation number and provide the title or the subject matter,
- (2) Briefly explain the reason why USAID cancelled the NOFO, and
- (3) Assure prospective applicants that they will be given an opportunity to apply for any subsequent or future NOFOs for the program, if appropriate.

The AO must document the:

- (1) Circumstances and rationale for the cancellation;
- (2) Applications received, returned, and purged; and
- (3) Cancellation notice and NOFO issuance dates.

303.3.5.5 Unsolicited Concept Papers and Applications

Effective Date: 06/01/2006

The [Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications](#) provides guidance for submitting unsolicited concept papers and applications. USAID should encourage the general public to review it.

303.3.6 Eligibility

Effective Date: 12/26/2014

In accordance with the Federal Grant and Cooperative Agreement Act, USAID encourages competition in the award of grants and cooperative agreements to identify and fund the programs that best achieve Agency objectives.

The Agreement Officer (AO) guarantees the integrity of the competitive process by ensuring overall fairness and consideration of all eligible applications. The AO also has the ultimate authority to make award decisions for grants and cooperative agreements on behalf of USAID.

The AO must not limit eligibility when awarding grants and cooperative agreements, unless USAID authorizes a restriction on eligibility in accordance with **303.3.6.4**. 2 CFR 200 requires that the Agency publish an announcement seeking applications from all eligible and qualified entities (see **303.3.5**).

303.3.6.1 Eligibility Requirements

Effective Date: 12/23/2019

The AO verifies that a Notice of Funding Opportunity (NOFO) or Annual Program Statement (APS) correctly identifies applicant eligibility requirements and essential program qualifications in accordance with the following standards:

- a. Authorizing legislation and governing program requirements specify eligibility requirements for individual grant programs. Generally, and in compliance with the [Foreign Assistance Act of 1961, as amended](#), USAID may provide assistance to any U.S. or non-U.S. organization, individual, non-profit, or for-profit entity. When specific program requirements restrict eligibility (for example, Title XII Collaborative Research Support Programs), USAID must identify the restriction in the Catalog of Federal Domestic Assistance, NOFO, APS, or other appropriate notice.
- b. **Merit Review Criteria.** The Planner must propose the merit review criteria for selecting an applicant. However, if the AO determines that the criteria is so restrictive that it severely limits the pool of potential applicants, the AO may request that the Planner change the criteria to broaden the pool of applicants.

- c. **Multi-tiered Review.** The Planner, with the approval of the AO, may establish a solicitation and review system with two or more tiers. The AO may request potential applicants to submit an executive summary or concept paper. The AO may also request corresponding budget information at their discretion. After reviewing these submissions, the Selection Committee selects the best submissions and conducts a second level solicitation and review with the selected applicants and uses more specific merit review criteria. The AO may conduct additional levels of solicitation and review only if the second level does not adequately identify applicants for the activities to be funded. Section C or Section E of the NOFO must explain the intended multi-tiered review/eligibility process so that potential applicants know what to expect at each phase of the review process.

303.3.6.2 Merit Review Criteria

Effective Date: 12/23/2019

- a. The Planner must develop the merit review criteria. The criteria must include the programmatic factors or priorities that affect eligibility for selection. The number of criteria should be limited to three or four factors. The review criteria in an announcement must provide as much information as practical to allow potential applicants to judge whether it is in their best interest to incur costs to apply for the award. The criteria must address the importance of the programmatic and administrative elements, but must not be unduly restrictive. It is not necessary to quantify the relative weight of the criteria, but the announcement must identify the relative importance of the criteria. The Planner must obtain the AO's approval of the criteria before the AO publishes the Notice of Funding Opportunity (NOFO) or Annual Program Statement (APS).
- b. **No Requirement for Prior USAID Experience.** NOFO and APS documents for the award of USAID assistance instruments must not require prior USAID experience.
- c. **Gender issues.** USAID must address gender issues in all USAID-funded activities (see [ADS 205](#)). In NOFOs (including those for Leader with Associate Awards) and APSs, the Agreement Officer must ensure that the NOFO or APS:
- Integrates gender issues into the solicitation (unless a rationale was provided by the Activity Planner for not addressing gender in the project or activity) in accordance with [ADS 205](#). When USAID directs applicants to incorporate gender issues into their applications, the NOFO or APS must state the requirements in the different performance components, e.g., Program Description, key personnel qualifications, if applicable, and monitoring and evaluation requirements.

- Integrates gender issues into the programmatic selection criteria (e.g., technical understanding and approach, monitoring and evaluation, personnel, etc.) that correspond to the performance requirements stated above, unless an approved rationale for not incorporating gender issues has been included in the NOFO or APS.

If the program/project office provides the Agreement Officer with a procurement request for a program that does not include the requirements in [ADS 205](#) for either integrating gender issues in the Program Description or the rationale for why gender is not an issue for the particular assistance program it intends to fund, then the Agreement Officer must notify the program/project office that no further action will be taken on the request until it meets one of these requirements.

For technical assistance and additional guidance, consult the USAID Mission/Office or Bureau gender specialist or the Office of Gender Equality and Women's Empowerment (GENDEV) in the Bureau for Economic Growth, Education, and Environment (E3).

- d. **Volunteers for Prosperity.** [Executive Order 13317](#) requires that an applicant's use of highly skilled U.S. volunteers be a review factor in the selection of applications for assistance activities to be implemented abroad under the following initiatives:
- The President's Emergency Plan for AIDS Relief (PEPFAR);
 - Digital Freedom Initiative;
 - Water for the Poor Initiative;
 - Trade for African Development and Enterprise Initiative;
 - Middle East Partnership Initiative; and
 - Other Presidential initiatives as identified in the future.
- e. **Environmental Concerns.** The Activity Planner must ensure that the requirements in [22 CFR 216](#) for an environmental impact assessment have been met, approved in writing by the relevant Bureau environmental officer, and are incorporated into the NOFO, APS and award as necessary. When USAID directs applicants to address environmental concerns in an activity, the NOFO or APS must state the requirement. [ADS 204](#) provides detailed guidance on environmental concerns, and [ADS 201](#) provides guidance on incorporating [ADS 204](#) into the planning, achieving, and learning processes.

- f. **Branding and Marking.** It is a Federal statutory and regulatory requirement (see [Section 641, Foreign Assistance Act of 1961, as amended](#), and [2 CFR 700.16](#)) that all overseas programs, projects, activities, public communications, and commodities that USAID partially or fully funds under an assistance award or subaward must be appropriately marked with the USAID identity. Under [2 CFR 700.16](#), USAID requires the submission of a Branding Strategy and a Marking Plan by the “apparently successful applicant.” The apparently successful applicant’s proposed Marking Plan may include a request for approval of one or more exceptions to the marking requirements in [2 CFR 700.16](#). The AO reviews and approves the apparently successful applicant’s Branding Strategy and Marking Plan (including any requests for exceptions), consistent with the provisions “Branding Strategy,” “Marking Plan,” contained in [ADS 303mba, Pre-Award Terms](#), and “Marking and Public Communications Under USAID-funded Assistance” contained in [ADS 303maa, Standard Provisions for U.S. Nongovernmental Recipients](#) and [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#), [2 CFR 700.16](#), and [ADS 320, Branding and Marking](#).

Note that in contrast to “exceptions” to marking requirements, waivers to these requirements based on circumstances in the host country must be approved by the cognizant Mission Director or other USAID principal officer [see [2 CFR 700.16\(5\)](#)]. Any questions about the applicability of either the Standard Provisions or [2 CFR 700.16](#) may be directed to General Counsel/Acquisition & Assistance (GC/A&A), or USAID’s Senior Advisor on Brand Management.

- g. **Climate Risk Management.** Climate risk management (CRM) is the process of assessing, addressing, and adaptively managing climate risks that may impact the ability of USAID to achieve its program objectives. Climate risks are defined as potential negative consequences due to changing climatic conditions. USAID Operating Units (OUs) must adhere to CRM requirements in project/activity design and implementation as required in [ADS 201mal](#), with limited exceptions described in Section 1 of the reference.

Accordingly, the OU must incorporate, as appropriate, the results of the climate risk assessment into the solicitation sections, Program Description and Selection Criteria, which the AO will then incorporate into the formal solicitation. Additionally, per [ADS 201mal](#), the climate risk assessment must be documented in the environmental compliance analysis. The [Climate Risk Management Resource Page](#) contains sample language that technical and program offices can use when creating assistance packages. Additionally, OUs may obtain support from the designated Climate Integration Lead (CIL) in each B/IO and Mission. The full list of CILs and their responsibilities is available on the [Climate Risk Management Resource Page](#).

303.3.6.3 Reviewing Applications

Effective Date: 06/19/2020

- a. At least two individuals (three or more is preferable) must be appointed to serve on each Selection Committee (SC) to review applications. The SC must review the applications using the review criteria stated in the Notice of Funding Opportunity (NOFO). The SC must keep selection information and applicant proprietary data confidential.
- b. Committee members must possess the requisite technical knowledge or expertise to review the programmatic merits of the applications. The Agency may make exceptions with the approval of the AO.
- c. Reviewers from other Federal Departments and Agencies are encouraged to participate on the SC whenever possible. Reviewers from outside the U.S. Government may also participate on the SC. USAID staff (direct hire and Personal Services Contract (PSC) employees) must comprise a majority of the members on the SC.
- d. The AO must take steps to ensure that members of the SC, both USAID staff and outside reviewers, do not have conflicts of interest with the organizations whose applications are being reviewed. A conflict of interest includes situations when:
 - The member of the SC works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review,
 - The member's spouse/partner or minor child works for or has any other financial interest (including being an unpaid member of a Board of Directors) in the organization that submits an application for the committee's review, and
 - An organization or entity in which an SC member serves as an officer, director, trustee, general partner, or employee, has a financial interest in an application under the committee's review. This includes situations where the SC member is negotiating for one of the positions listed here and is serving as an unpaid member of the organization or entity's Board of Directors.
 - An employee of an external organization (e.g., technical advisors in AIDS, child survival, infectious diseases, population, basic education) participates in the review of a potential competitor's application, which allows the SC access to financial or other data that may be competitively useful to the reviewer's organization.

The Planner and the SC must make all efforts to identify potential conflicts early in the review and selection process. Because resolution of conflicts of interest is fact driven

and case specific, the Planner and SC must coordinate with the AO and the cognizant General Counsel or Resident Legal Officer on the issues.

- e. When periodic reviews are specified, the Planner must collect the applications as they are received until the Agency can review a reasonable number in accordance with the provisions of the announcement. If the Planner and AO established a specific timeframe for the review of applications in the NOFO, for example, quarterly reviews, and only a small number of applications are received during that time, the AO may consider the applications received to be a reasonable number. The SC may also include applications it received in response to earlier notices in a periodic review.
- f. For BHA programs, the AtA/BHA may authorize selection of a sole application received, if the director determines that it is not advisable to wait for more applications. The Activity Planner must provide a copy of such an authorization to the AO.
- g. When reviewing applications against a criterion related to gender issues, the Activity Planner must coordinate with the Bureau for Economic Growth, Education, and Environment, Office of Gender Equality and Women's Empowerment (E3/GENDEV).
- h. If an unsolicited application reasonably fits an existing program, the AO and Planner may include the application in a relevant review and selection under an RFA or APS. If it does not, a justification to restrict eligibility under **303.3.6.5** must be approved before the AO can issue an award to the applicant.
- i. The same SC members should review all applications for each specific award. If this is not possible or if there are established procedures for review by separate SCs, the Planner must document the reason and the procedure and submit it to the AO for the agreement files.
- j. The AO must provide the SC with a written review plan that specifies the criteria and methodology for reviewing the applications consistent with the information published in the RFA or APS.
- k. The SC must prepare a written selection memorandum of each application as compared to the established review criteria.
- l. Templates and guides for the selection committee, cost application review, and award memorandum are available on USAID's internal website at: <https://pages.usaid.gov/M/OAA/assistance-templates>.
- m. The SC's narrative in the selection memorandum must detail each application's strengths and weaknesses relative to the review criteria. If the RFA or APS does

not indicate the relative importance of the review criteria, then all criteria are equally weighted. If the RFA or APS assigned numerical values to the criteria, then the report must include a discussion of the numerical scoring, in addition to the narrative identifying strengths and weaknesses.

- n. The SC must also include a discussion of its review procedure in their review documentation.
- o. Upon completion of the SC's review, the Planner then must forward the selection memo to the AO, who must place a copy in the award file.
- p. AOs must ensure that the solicitation, selection, award, and administration of USAID grants and cooperative agreements follow all the requirements and guidance of [22 CFR 205, Participation By Religious Organizations In USAID Programs](#) (see **303.3.28**).

303.3.6.4 Eligibility and Preference for Maximum Competition

Effective Date: 02/07/2020

a. Applicability

Competition and the requirements regarding restricting eligibility in this ADS chapter do not apply to awards or amendments that:

- (1) Are not Federal financial assistance as defined in [2 CFR 200.40](#). This includes agreements with public international organizations (see [ADS 308](#)), bilateral development partners (see [ADS 350](#) and [ADS 351](#)), and awards or solicitations using other transaction authorities;
- (2) Are entirely funded by non-appropriated funds (for example, gifts received by USAID from bilateral and multilateral donors, host governments, or the private sector); or
- (3) Are based on an unsolicited application (see **303.3.5.5**).

b. Preference for Maximum Competition

Consistent with the Federal Grant and Cooperative Agreement Act of 1977, USAID encourages unrestricted competition in the award of discretionary grants and cooperative agreements. USAID expects unrestricted competition in the award of discretionary grants and cooperative agreements, unless otherwise restricted following the requirements and procedures of sections **303.3.6.4** and **303.3.6.5**.

Competition serves to identify and fund the activities that best achieve Agency objectives. As such, it is USAID policy to allow all eligible organizations to compete

for assistance awards unless there is a strong programmatic rationale to restrict eligibility that outweighs the benefits of a competitive process.

Following the [Foreign Assistance Act of 1961, as amended](#), USAID may provide assistance to any U.S. or non-U.S. organization, individual, non-profit, or for-profit entity. When specific program requirements call for restricted eligibility, USAID must identify and describe the restriction in the Catalog of Federal Domestic Assistance, NOFO, or other notice, as required by **303.3.5**.

The AO must protect the integrity of the competitive process by ensuring fair and impartial consideration of all applicants. The AO has the ultimate authority to make award decisions for grants and cooperative agreements on behalf of USAID.

303.3.6.5 Restricted and Unrestricted Eligibility

Effective Date: 06/19/2020

a. Unrestricted Eligibility

Unrestricted eligibility refers to a funding opportunity that is open to all entities.

b. Restricted Eligibility

Restricted eligibility refers to:

- A funding opportunity that is limited to a specific type of entity or otherwise narrows the pool of applicants that may compete for a grant or cooperative agreement;
- An award or other assistance action that is limited to one or a limited number of recipients;
- Amendments to extend an award, other than those authorized by [2 CFR 200.308\(d\)\(2\)](#);
- Amendments to increase the total estimated amount of the award; or
- Amendments that change the fundamental scope of the award objectives.

Eligibility must not be restricted for:

- Personal preference, for example, personal relationships with key personnel, the perceived burden of a competitive process, or other non-programmatic rationales;
- Avoidance of mobilization or demobilization costs;

- Lack of adequate planning; or
- Concerns about the availability of funds, such as expiring funds.

c. Restricted Eligibility Based on Pre-Approved Conditions

The Planner/AOR has the authority to make a determination to restrict eligibility based on one of the following pre-approved conditions. The determination does not need to be a separate document but may be described and approved in the Project Appraisal Document (PAD) (see [ADS 201](#)), equivalent activity approval document, Selection of Instrument memorandum, other assistance planning documentation, or by amendment to these documents. The cognizant RLO or GC Bureau or Independent Office backstop attorney must clear the determination.

- (1) Eligibility will be limited to local entities as statutorily defined (see definitions below). This restriction cannot be used to restrict eligibility to a single organization.
- (2) Eligibility will be limited to organizations that have received less than \$25 million in USAID funding, at any tier, over the past five years; or for global health awards the organization has received less than \$25 million in U.S. Government funding at any tier, over the past five years. This restriction cannot be used to restrict eligibility to a single organization.
- (3) The award is at or below the simplified acquisition threshold. This restriction should generally not be used to restrict eligibility to a single organization; however, if there are unique circumstances that support an award to a single organization then the Planner/AOR must document these circumstances in the appropriate planning documents and include them in the award file.
- (4) The award is an associate award under a Leader with Associate Award.
- (5) The award is for disaster relief, rehabilitation or reconstruction assistance provided under section 491 of the Foreign Assistance Act, and for emergency food aid under Title II of the Food for Peace Act. This restriction to eligibility may be made following the written determination by the AtA/BHA, in the Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA) (see [ADS 103](#)), that unrestricted eligibility is impracticable for awards within their respective areas of responsibility on an award-by-award or disaster-by-disaster basis.
- (6) An award for which legislation includes a legally binding Congressional directive that specifies that USAID make an award to the particular organization. The determination must include a copy of the statute that identifies the awardee, as well as any information that supports the planned activity.

- (7) An award made under an Administrator-approved blanket determination or justification to restrict eligibility for an approved class of awards, for example, an Expedited Procedures Package, such as for PEPFAR, conflict-sensitive environments, or other circumstances the Administrator deems appropriate. The cognizant RLO or GC/A&A attorney must clear the determination (see [ADS 302mbo, Guidance for Use of the Authorities under Expedited Procedures Packages \(EPPs\)](#)).

The AO must verify that the planner's/AOR's determination is based on one of the above conditions and includes the relevant citation. The AO must place the planner's/AOR's determination including the AO's verification in the award file in ASIST.

d. Restricted Eligibility Based On Programmatic Purposes

The cognizant Mission Director (MD), Assistant Administrator (AA), or Head of an Independent Office that reports directly to the Administrator has the authority to make a determination to restrict eligibility based on programmatic purposes. The determination does not need to be a separate document but may be described and approved in the Project Appraisal Document (PAD) (see [ADS 201](#)), equivalent activity approval document, Selection of Instrument memorandum, other assistance planning documentation, or an amendment to the document. The Planner/AOR is responsible for preparing the determination, which must provide the programmatic rationale for restricting eligibility consistent with this section, and support how the rationale outweighs USAID's policy preference for, and the benefits of, an unrestricted competitive process. The authority for the determination is not delegable. The cognizant RLO or GC Bureau or Independent Office backstop attorney must clear the determination.

For a determination to restrict eligibility for an award over \$10 million (\$20 million for Critical Priority Countries (CPCs)) to a single organization for programmatic purposes, the written determination must also describe the steps taken, including market research, outreach, and public notices, to identify alternatives including engaging with a broader cross-section of development partners as required by Agency policy. This determination must be described and approved in the Project Appraisal Document (PAD) (see [ADS 201](#)), equivalent activity approval document, or other assistance planning documentation.

- (1) Some examples of programmatic rationales for restricting eligibility based on a written determination include:
- i. Increasing the Agency's partner base by restricting eligibility to organizations that have not previously received a direct award from USAID;

- ii. Developing the capability of a local entity or locally established entity by making a direct award to such entity that has previously only received subawards or grants under contract (for example, a transition award);
- iii. Accessing specialized skills or experience through an award to an entity with exclusive or predominant capability based on proprietary resources, specialized facilities, or unique relationship with the national government or other institutions in the cooperating country or intended beneficiaries;
- iv. Responding to a disaster, violent conflict, political crisis, or other emergency situation that requires an award to be made more rapidly than unrestricted competition can accommodate; or
- v. Developing a promising science and technology concept; or a unique, innovative, or proprietary solution addressing a pressing development challenge.

e. Additionally, the Administrator must approve the written determination for an award or amendment to a single organization as a follow-on with substantially the same program description as an existing award to that organization, where the amount of the award or amendment is \$40 million or above. If the award was approved under the SOAR process and the determination was included as a part of the SOAR package, then no further Administrator approval is required.

f. If an award is extended beyond ten years from the original award date, the AOR must obtain the Administrator's approval for the extension.

g. The AO must file the final written determination in the award file in ASIST.

303.3.6.6 Late or Incomplete Submissions

Effective Date: 12/26/2014

USAID may review and consider late or incomplete Request For Applications (RFA) or Annual Program Statement (APS) award applications if:

- USAID's treatment of the material is consistent with the terms of the RFA or APS,
- All late applications are treated the same, and
- They are reviewed before any agreements are awarded under the RFA or APS.

The AO must consent in writing to the review of late or incomplete applications.

303.3.6.7 Conflicts of Interest

Effective Date: 08/30/2018

USAID staff (see [ADS 545](#)) are bound by U.S. regulations governing standards of ethical conduct, including conflicts of interest. Applicants for and recipients of federal assistance, must disclose to the Agreement Officer in writing any real or potential conflict of interest.

a. Conflicts of Interest for USAID Staff

USAID staff must recuse themselves from personal and substantial involvement in a particular matter that could affect their own direct or imputed financial interests, as defined in [18 USC 208](#); or create an appearance regarding their own interests or the interests of a person or entity with which they have a “covered relationship” as defined in [5 CFR 2635.502](#). In addition, USG staff may not misuse their position for the private gain of themselves, family, friends, or other associates, as defined in [5 CFR 2635.702](#) (see **303.3.6.3d** for Selection Committee conflicts of interest).

b. Applicant and Recipient Conflicts of Interest Requiring Disclosure to the Agreement Officer

Pre-award Conflicts of Interest. AOs must include the Conflict of Interest Pre-Award Term (August 2018) in all NOFOs. This term requires an applicant to notify USAID of any actual or potential conflict of interest that they are aware of that may provide the applicant with an unfair competitive advantage in competing for a financial assistance award.

The AO may not execute an award or may determine the applicant to be ineligible for the award, if the AO determines that a conflict of interest cannot be adequately resolved.

Post-award Conflicts of Interest. AOs must include the mandatory standard provision, “Conflict of Interest (August 2018)” in all solicitations and awards. This provision requires the recipient to disclose any conflict of interest, including organizational conflicts of interest, in the award, administration, or monitoring of subawards. The recipient must propose an approach for resolving the conflict of interest to the cognizant Agreement Officer within 10 calendar days of the discovery of the conflict of interest.

The AO must review all conflict of interest disclosures, both pre-award and post-award, and the applicant’s or recipient’s proposed resolution. The AO must determine if the mitigation is adequate. The AO must notify the recipient within 30 days of receipt of the recipient’s notice that the disclosures and measures

proposed to resolve the conflict of interest are adequate or inadequate, unless the AO advises the recipient that a longer period is necessary.

303.3.7 The Award Decision

Effective Date: 06/01/2006

The AO's decision to fund or not to fund an award is final and not subject to review. Any information that may impact the AO's decision must be directed to the AO.

303.3.7.1 Notification

Effective Date: 06/01/2006

- a. Only the AO may notify the apparently successful awardee that they are being further considered for an award. It is essential that no one on the SC make any commitment, expressed or implied, to the selected applicant. Only the AO is authorized to make a commitment on behalf of USAID.
- b. USAID must individually notify each applicant in writing on the success of its application. Once USAID decides which applicant the Agency will consider for award, the AO or the Planner (if authority is delegated by the AO) must notify all unsuccessful applicants that they will not be considered further and briefly explain why USAID did not select their application. The letters must be approved by the AO before the Planner may send them.

303.3.7.2 Request for Additional Information

Effective Date: 12/26/2014

Within 10 working days after an applicant receives notice that USAID will not fund its application, the unsuccessful applicant may send a written request for additional information to the AO.

Additional information may be provided at the discretion of the AO. USAID may respond orally or in writing. The cognizant B/IO should respond to the request within 30 days after consultation with the AO or inform the applicant that more time is necessary. If responding orally, the AO or the technical representative from the B/IO must make a written summary of the response for the agreement file. The AO must be present at and lead any meeting. If responding in writing, the AO must approve any written communication before it is sent to the unsuccessful applicant.

USAID's responses must be limited to the Agency's interest in supporting the applicant's program as described in the application. Comparing one application to another is neither advisable nor helpful to the applicant. The Selection Committee (SC) chair and the AO should only give additional information that would be useful to the applicant in preparing future applications.

If the applicant has questions about the program or about the programmatic review, the SC chair will provide constructive feedback that may assist the applicant when developing applications in the future. The SC chair may explain the basis for the decision and the strengths and weaknesses of the application in terms of the published review criteria. When the applicant has questions about process, accountability, and business considerations, the AO will respond. The SC chair and the AO will jointly respond when the applicant raises both types of questions.

303.3.8 Pre-Award Certifications, Assurances, Representations, and Other Statements of the Recipient and Pre-Award Terms

Effective Date: 05/18/2020

In addition to the certifications included in the [Standard Form 424](#), the AO must obtain the following certifications, assurances, and other statements from both U.S. and non-U.S. organizations (except as specified below) before making an award and as otherwise required by the regulations listed in this section. The AO must also incorporate the solicitation standard provisions and provide links to the applicable award standard provisions in all solicitations.

The AO may choose to request the applicant to submit the certifications either as part of the application or during negotiations. The AO should consider the administrative burden of requiring certifications as part of the application in light of potential delays in making the award while waiting for the certifications.

If the recipient submits any disclosure(s) regarding support to terrorists and the technical office/OU determines that the AO should move forward with an award, the technical office Director must submit a recommendation to the Director M/OAA for approval, with clearance by the cognizant Assistant General Counsel or RLO.

The required certifications, assurances, and other statements are:

- a. A signed copy of [ADS 303mav, Certifications, Assurances, Representations, and Other Statements of the Recipient](#), which includes:
 1. **Assurance of Compliance with Laws and Regulations Governing Nondiscrimination in Federally Assisted Programs** (This assurance applies to Non-U.S. organizations, if any part of the program will be undertaken in the U.S.);
 2. **Certification Regarding Lobbying** ([22 CFR 227](#));
 3. **Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals** ([ADS 206, Prohibition of Assistance to Drug Traffickers](#));
 4. **Certification Regarding Support to Terrorists;**
 5. **Certification Regarding Trafficking in Persons;** and

6. Certification of Recipient

- b. Other certifications and statements found in [ADS 303mav, Certifications, Assurances, Representations, and Other Statements of the Recipient](#):
1. A signed copy of **Key Individual Certification Narcotics Offenses and Drug Trafficking**, ([ADS 206.3.10](#)) when applicable;
 2. A signed copy of **Participant Certification Narcotics Offenses and Drug Trafficking** ([ADS 206.3.10](#)) when applicable;
 3. A completed copy of **Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction**;
 4. **Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation**
 5. **Other Statements of Recipients.**
- c. The pre-award terms found in [ADS 303mba, Pre-Award Terms](#) that must be incorporated into the solicitations are:
1. Branding Strategy – Assistance
 2. Marking Plan – Assistance
 3. Conscience Clause Implementation (Assistance)
 4. Conflict of Interest Pre-Award Term

303.3.9 Pre-Award Risk Assessment

Effective Date: 08/01/2019

The recommendation or selection of an application for award by a Planner or a Selection Committee does not in any way guarantee the award. The AO must evaluate the risks posed by applicants before making the award. The AO must evaluate risk in accordance with the principles established by USAID and the Office of Management and Budget (OMB) (see **2 CFR 200.205**). The AO must also check the Agency Secure Image Storage and Tracking System (ASIST) for completed performance reviews to inform the risk assessment of the applicant.

Depending on the result of this pre-award risk assessment, the AO may either:

- Make the award,
- Deny the recommendation of the Planner and not execute the award, or

- Award with "specific conditions" (**2 CFR 200.207** and **303.3.9.2**).

A positive risk assessment means that the applicant possesses or has the ability to obtain the necessary management competence to plan and carry out the assistance program to be funded, and that the applicant will practice mutually agreed upon methods of accountability for funds and other assets provided by USAID.

History of Performance. Note that while an organization's history of performance on USAID awards should be a factor in determining the level of risk, a history of receiving grants from USAID does not guarantee that there is no risk in providing funds to an organization. Changes in personnel, accounting practices, or financial status may affect an organization's performance on a new award.

An applicant's history of performance can serve as an indicator of the quality of its future performance. An applicant must provide a list of all its cost-reimbursement contracts, grants, or cooperative agreements involving similar or related programs during the past three years. The reference information for these awards must include the performance location, award number (if available), a brief description of the work performed, and a point of contact list with current telephone numbers. The Planner and AO determine whether to require this information as part of the initial application or later from the apparently successful applicant(s). Requiring the information at a later date may be appropriate when USAID is conducting a multi-tiered review (see **303.3.6.1.d**) (see [Best Practices for Collecting and Using Current and Past Performance Information](#)).

The Selection Committee chair must validate the applicant's past performance reference information based on existing evaluations to the maximum extent possible, and make a reasonable, good faith effort to contact all references to verify or corroborate the following:

- How well an applicant performed,
- The relevancy of the work performed under the program,
- Instances of good performance,
- Instances of poor performance,
- Significant achievements,
- Significant problems, and
- Any indications of excellent or exceptional performance in the most critical areas.

The Selection Committee chair and the AO may use the Contractor Performance Assessment Reporting System (CPARS) and the Past Performance Information Retrieval System (PPIRS) if there is information available on the recipient in these systems, taking into account the differences between performance under acquisition and performance under assistance.

The Planner and the Selection Committee chair may contact references other than those provided in the application, if the RFA or APS state that it is allowed.

Additionally, before making an award or amending an award to add incremental funding, increase the total program amount, or extend the period of performance with additional cost, the AO must verify that the successful applicant/recipient:

- Does not have active exclusions in the System for Award Management (SAM) (beta.sam.gov);
- Does not appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the “OFAC List” (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>); and
- Is not listed in the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

Prior to providing approval for any subawards, the AO must obtain confirmation from the applicant/recipient that a risk assessment has been conducted for each proposed subrecipient(s) by name, including the applicant’s/recipient’s verification that the subrecipient(s):

- 1) Does not have active exclusions in the System for Award Management (SAM) (beta.sam.gov);
- 2) Does not appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the “OFAC List” (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>); and
- 3) Is not listed in the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

Pursuant to [2 CFR 780](#) and [2 CFR 180](#), the Assistant Administrator of the Bureau for Management, or designee, has the authority to grant an exception permitting an organization with active exclusions to receive federal assistance. However, such an

exception can only be made in writing and must include a description of the unique circumstances that warrant deviation from the government-wide policy.

The AO must address the risk assessment of the prospective recipient and document all findings in the Negotiation Memorandum. The AO must also certify in the Global Acquisition and Assistance System (GLAAS) that the applicant is not listed as actively excluded in SAM.gov as suspended, debarred, or proposed for debarment.

When awarding a Fixed Amount Award, the following are to be used instead of those specified in this section:

- The procedures in **303.3.25**;
- [ADS 303saj, Fixed Amount Award to Non-Governmental Organizations](#); and
- [ADS 303mak, Fixed Amount Award Entity Eligibility Checklist](#).

For all other assistance awards, the following is specific guidance by category for assessing risk:

CATEGORY A: U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

When a U.S. organization has previously received a positive risk assessment by USAID or another USG Agency, the AO may rely on:

- A **Single Audit** or similar audit maintained by M/OAA/Contract Audit and Support Division, Contract Audit Management;
- A signed copy of the applicable statutory and regulatory certifications required in **303.3.8**;
- The quality of the applicant's history of performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement; or
- Other information as necessary, including formal pre-award surveys (see **303.3.8**, **303.3.5.2**, **303.3.9.1** and **303.3.25**).

CATEGORY B: NON-U.S. ORGANIZATIONS THAT HAVE BEEN RECIPIENTS OR CONTRACTORS UNDER USAID OR OTHER U.S. GOVERNMENT (USG) ACQUISITION OR ASSISTANCE INSTRUMENTS

To make a risk assessment for a non-U.S. organization that has previously received a positive risk assessment by USAID or another USG Agency, the AO may rely on:

- Audits performed in accordance with [ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities 591.3.4.2](#);
- A signed copy of the applicable statutory and regulatory certifications required in **303.3.8**;
- The quality of the applicant's history of performance on similar USAID projects, including compliance with the terms and conditions of the funding agreement; or
- Other information as necessary and appropriate, including pre-award surveys, (see **303.3.8**, **303.3.5.2**, **303.3.9.1** and **303.3.25**).

CATEGORY C: ORGANIZATIONS NEW TO USAID OR ORGANIZATIONS WITH OUTSTANDING AUDIT FINDINGS

If a criteria found in **303.3.9.1**, applies to the selected or recommended applicant, the AO must perform a survey in conformance with that provision before making a risk assessment decision. The survey must be considered when making the decision. At a minimum, the risk assessment for such an applicant will be based on the same considerations as in categories **a** or **b** of this section, depending on whether it is a U.S. or non-U.S. organization. Additionally, the AO must obtain the following information from these applicants, when appropriate:

- Copies of audited financial statements for the last three years, which a Certified Public Accountant or other auditor satisfactory to USAID has performed;
- Projected budget, cash flow, and organization charts; and
- Copies of applicable policies and procedures (e.g., accounting, purchasing, property management, personnel).

303.3.9.1 Pre-Award Surveys

Effective Date: 08/01/2019

- a. Pre-Award Survey Requirements.** For all assistance awards, if any of the following criteria apply, the AO must establish and convene a formal survey team to conduct an examination that will help inform the Pre-Award Risk Assessment (see **303.3.9**):
- (1)** The AO or Planner is uncertain about the prospective recipient's capacity to perform financially or programmatically.

- (2) The prospective recipient has never had a USAID grant, cooperative agreement, or contract. This requirement does not apply to Fixed Amount Awards.
- (3) The prospective recipient has not received an award from any Federal agency within the last five years. This requirement does not apply to Fixed Amount Awards.
- (4) The AO has knowledge of deficiencies in the applicant's annual audit (**Single Audit** or equivalent).
- (5) The AO determines it to be in the best interest of the U.S. Government.

b. Contents of the Pre-Award Survey. The survey team examines the applicant's systems to determine whether the prospective recipient has the necessary organization, experience, accounting and operational controls, and technical skills in order to achieve the objectives of the program, or whether specific conditions will be needed.

- (1) For a U.S. organization, the AO must ensure that the applicant can meet the requirements of the award, including **2 CFR 200** and the applicable cost principles. The AO or the AO's representative must conduct a detailed analysis that addresses whether:
 - i. The applicant's accounting, recordkeeping, and overall financial management systems meet the standards in **2 CFR 200.300-309 and 2 CFR 200.333-337**.
 - ii. The applicant's system of internal controls is reasonable in accordance with applicable cost principles. This includes the segregation of duties, handling of cash, contracting procedures, and personnel and travel policies.
 - iii. The applicant's property management system, if applicable, meets the property standards in **2 CFR 200.310-316**.
 - iv. The applicant meets the requirements in [2 CFR 200.330-332](#) for the administration and monitoring of subawards.
 - v. The applicant's procurement system, if procurement is significant to the award, meets the standards set forth in **2 CFR 200.317-326**.
- (2) For a non-U.S. organization, the AO must ensure that the applicant can meet the requirements of [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#) as part of the risk assessment. For local non-U.S. organizations, the pre-award survey team must either use [ADS 303sam, Non-U.S. Organization Pre-Award Survey](#)

Guidelines and Support or conduct a detailed analysis in accordance with locally-established or award-specific criteria that achieve the same objectives as the **NUPAS**. For additional guidance regarding local non-U.S. organizations pre-award surveys, risk assessments, and specific conditions (see **ADS 303sam, NUPAS Guidelines and Support**).

- (3) For Fixed Amount Awards, the AO must use the **ADS 303mak, Fixed Amount Award Entity Eligibility Checklist** to ensure the intended recipient will be able to comply with **ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations**.
- c. **Composition of the Pre-Award Survey Team.** When assembling a formal survey team, the AO must ensure appropriate expertise.
- (1) A typical team consists of:
 - i. A technical office team member,
 - ii. The AO, or the AO's representative,
 - iii. A financial officer from the Bureau for Management, Office of the Chief Financial Officer, or the Mission or regional controller's office, and
 - iv. A representative from M/OAA/Contract Audit and Support Division, Contract Audit Management Branch (for Washington-based awards), if possible.
 - (2) Depending on the capacity of the Operating Unit to assemble the above team, the survey may be conducted in whole or in part by a local accounting firm approved by the cognizant Regional Inspector General as long as the Scope of Work for such work includes conflict of interest restrictions prohibiting the firm from providing capacity development to entities it surveys.
 - (3) The survey team reviews the applicant's systems against the standards discussed in paragraph b of this section and submits its findings to the AO for review, consideration, and informing the risk assessment.
- d. **Risk Assessment Decision.** Before the award of any grant or cooperative agreement, the AO must:
- (1) Review the proposed project description and budget to ensure that they adequately describe the objectives of the project, the activities funded by USAID that will achieve the objectives, and a monitoring system to measure the project's progress. The Planner advises the AO on the

professional and technical experience and competence of the applicant and the conformity of the application to USAID criteria.

- (2) Make a written final determination of the applicant's risk in the Memorandum of Negotiation. If the determination is positive, the AO must state in the memorandum that the applicant:
- i. Has adequate financial resources or the ability to obtain such resources, as required during the performance of the award.
 - ii. Has the ability to meet the award terms and conditions, considering all existing prospective recipient commitments, both non-governmental and governmental.
 - iii. Has a satisfactory record of performance. Generally, relevant unsatisfactory performance in the past is enough to justify a finding of non-responsibility, unless there is clear evidence of subsequent satisfactory performance or the applicant has taken adequate corrective measures to assure that it will be able to perform its functions satisfactorily.
 - iv. Has a satisfactory record of business integrity.
 - v. Is otherwise qualified to receive an award under applicable laws and regulations.

303.3.9.2 **Specific Conditions** Effective Date: 12/23/2019

It is the AO's responsibility to minimize the risk to USAID posed by high risk organizations. If, after conducting a comprehensive risk assessment of a potential recipient, the AO is unable to make a positive risk determination, the AO may either deny the Planner's recommendation and not make the award or award with "specific conditions" (high risk) (see [2 CFR 200.207](#)). The AO, however, may consider this choice only if it appears likely that the potential recipient can correct its deficiencies within a reasonable period of time. Because regulation authorizes "specific conditions," a deviation is not needed.

a. Means to Minimize Risk. When the AO makes an award, the AO may consider requiring any of the following specific conditions:

- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (3) Requiring additional, more detailed financial reports;

- (4) Requiring additional project monitoring, which can include site visits;
- (5) Establishing additional prior approvals; or
- (6) Requiring the recipient to obtain technical or management assistance.

When the AO determines that more Federal oversight is necessary, the AO may:

- Issue a contract to a third party to provide technical assistance to the recipient,
- Require the recipient to contract for technical assistance, or
- Have USAID staff provide technical assistance directly to the recipient.

b. The AO must notify the successful applicant of:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

c. Non-U.S. NGO Recipients

Because **2 CFR 200** is not legally applicable to awards to non-U.S. organizations, as a matter of USAID policy, the standards in this ADS section **303.3.9.2d** must be used for making awards to non-U.S. recipients with specific conditions. Where deficiencies or weaknesses are identified by the pre-award survey under **303.3.9.1b(2)** and cannot be corrected prior to award, the AO may make an award upon an affirmative risk assessment determination that is contingent upon one or more specific conditions in the award. Such specific conditions must mitigate the risks posed by the deficiencies or weaknesses identified by the NUPAS and require the recipient to correct the reported deficiencies. Specific conditions for non-U.S. recipients may be of limited

duration or may cover the entire period of the award. For additional guidance on specific conditions for non-U.S. recipients, see the NUPAS Guidelines and Support. Additionally, when specific conditions are used with non-U.S. recipients, the following requirements apply:

- (1) The specific conditions must contain language subjecting the recipient to a follow-up review/survey within a reasonable time after award to verify compliance with the conditions;
- (2) The continuation of award performance must be predicated on the recipient correcting the reported inadequacies within the timeframe identified in the award;
- (3) The Negotiation Memorandum must document in the risk determination section the rationale for including each specific condition;
- (4) The specific condition(s) must specify in the award document:
 - i. The nature of the additional requirements,
 - ii. The nature of the corrective action needed,
 - iii. The time allowed for completing the corrective actions; and
- (5) The cognizant Operating Unit must develop and carry out a plan for monitoring and supporting the recipient in satisfying any specific conditions.

Whenever possible, specific conditions must be for as limited a time period as necessary to mitigate the identified risks and not for the life of the award.

For specific conditions that do not cover the entire award period, once the specific condition has been satisfied and its conditions have been fully met, the Agreement Officer must remove the specific condition by formal amendment to the award. For specific conditions that cover the entire period of the award, the specific condition must clearly state that it covers the entire period of the award or must identify clearly the timeframe(s) or milestones at which the inclusion of the specific may be reconsidered, amended or removed.

303.3.10 Cost Share and Program Income Effective Date: 08/18/2020

“Cost share” refers to the resources a recipient contributes to the total cost of an agreement. Cost share becomes a condition of an award when it is part of the approved award budget. The cost share must be verifiable from the recipient’s records; for U.S. organizations it is subject to the requirements of [2 CFR 200.306](#), and for non-

U.S. organizations it is subject to the Standard Provision, “Cost Share”; and can be audited. **Costs that are unallowable in accordance with the applicable cost principles at the time of the award cannot be accepted as cost share.** If a recipient does not meet its cost share requirement, the AO may apply the difference in actual cost share amount from the agreed upon amount to reduce the amount of USAID funding for the following funding period, require the recipient to refund the difference to USAID when this award expires or is terminated, or reduce the amount of cost share required under the award.

303.3.10.1 Cost Share Determination

Effective Date: 08/04/2020

Although there is no general legislative requirement that recipients of grants or cooperative agreements must cost share, cost sharing is an important element of the USAID-recipient relationship. When used, its application should be flexible, case-specific, and used to support or contribute to the achievement of results. USAID should use cost sharing after considering whether it is appropriate for the recipient organization in the particular circumstances, in particular, the programmatic and technical context. There is no set formula for cost sharing. There is not a suggested numeric reference point. Cost sharing should be based on the needs or purpose of the activity. Examples of when cost sharing may be appropriate include:

- When there is a programmatic rationale for cost sharing, such as helping to ensure that the recipient will build its organizational capacity for mobilizing resources. For example, when building fundraising capability is an objective of an activity, it would be appropriate to require the recipient to meet specific private financing targets as a condition of USAID funding.
- When it is critical that the activity continues after USAID assistance ends, cost sharing requirements can ensure that the recipient establishes adequate alternate sources of funding.
- When an award supports an activity initiated by the recipient or an unsolicited application. Because most USAID funding is reserved for development priorities the Agency has already established, only limited funding may be available for even the best of other programs. USAID may only be able to partially fund these other activities.
- To otherwise give the recipient a financial stake in the success of a program.

In all of these cases, the AO should discuss the amount and terms of cost sharing with potential recipients prior to award (see [ADS 200saf, Guidance on Consultation and Avoidance of Unfair Competitive Advantage](#)).

The Activity Planner must determine the appropriate cost share for individual grants and cooperative agreements. The Planner must include this determination in the financial analysis of the program prior to issuance of a Notice of Funding Opportunity (NOFO) or

an Annual Program Statement (APS). In the case of awards solicited with unrestricted eligibility, the Planner and AO are encouraged to communicate with a broad range of potential applicants regarding appropriate cost sharing prior to issuance of the NOFO or APS. Even after USAID issues a NOFO or APS, it may be appropriate to consider special circumstances and change the cost share requirement. In the case of restricted eligibility awards, the AO may wish to discuss or negotiate the cost share with the applicant, especially those who submit unsolicited applications.

USAID may not use a set formula in determining the level of cost share. The Planner should take several considerations into account when making cost share decisions. For example, it might be difficult for a recipient to meet a cost share requirement during an activity with a short timeframe. A specific program may be risky and discourages potential recipients from providing meaningful contributions. Eligibility may be limited to indigenous organizations with limited resources.

The Planner must write a memorandum to the AO documenting the factors that were considered when determining the amount of cost share.

USAID may require cost sharing regardless of the type of organization, whether non-profit (U.S. and international private voluntary organizations, local nongovernmental organizations, universities, foundations, and others) or commercial organizations, including for-profit businesses. In the case of a non-U.S. recipient, it is important to be flexible when establishing cost sharing requirements.

If an activity generates program income, the AO may approve use of program income to finance the non-Federal cost-share of an award (see also [2 CFR 200.307](#) and the standard provision “Program Income”).

303.3.10.2 Cost Sharing in NOFOs and APS

Effective Date: 12/23/2019

If USAID makes a determination to require cost sharing in an award, it must state the requirements in the announcement. If USAID issues an announcement [Notice of Funding Opportunity (NOFO) or Annual Program Statement (APS)] and the Planner decides that the amount of cost share required should be changed, the Planner must provide an adequate justification and request the AO to amend the NOFO or APS document, as applicable. Applications that do not meet the minimum cost share requirement, when applicable, are not eligible for award consideration (see **303.3.5.2c** and **303.3.5.2e**)

In accordance with **2 CFR 200.306**, cost sharing cannot be used as a separate factor during the merit review of applications. However, cost sharing may be considered in the merit review only if the funding announcement specifically addresses how it will be considered, e.g., assigning a certain number of additional points to applicants who offer cost sharing, or using cost sharing to break ties among applications with equivalent

scores after evaluation against all other factors. Note that excessive reliance on cost sharing during the merit review may unfairly favor larger, better-funded organizations.

303.3.10.3 Meeting Cost Sharing Requirements

Effective Date: 12/26/2014

As part of the analysis of the applicant's proposed budget, the AO must review the applicant's proposed cost share contributions for cost realism. The AO must verify that the proposed contributions meet the standards set in [2 CFR 200.306](#) for U.S. organizations or the Standard Provision "Cost Share" for non-U.S. organizations. USAID does not apply its source and nationality requirements or the restricted goods provision established in the Standard Provision "USAID Eligibility Rules for Commodities and Services" to cost share contributions.

In the award budget, cost share must be expressed as a dollar figure rather than a percentage to assist in monitoring the amount. Cost sharing applies throughout the life of an agreement, and the AOR must monitor the recipient's financial reports to ensure that the recipient is making progress toward meeting the required cost share. If it appears that the recipient is not making adequate progress, the AOR must bring this to the attention of the AO. The AO then must initiate discussions with the recipient to resolve the issue. The AO has the authority to reduce the amount of USAID incremental funding in the following funding period or to reduce the amount of the agreement by the difference between the expended amount and what the recipient agreed to provide. If the award has expired or been terminated, the AO may request the recipient to refund the difference to USAID.

In-kind contributions are allowable as cost share in accordance with [2 CFR 200.306](#) for U.S. organizations and in accordance with the Standard Provision, "Cost Share" for non-U.S. organizations. This includes things such as volunteer time; valuation of donated supplies, equipment, and other property; and use of unrecovered indirect costs.

303.3.10.4 Program Income

Effective Date: 08/04/2020

[2 CFR 200.80](#) defines program income as gross income earned by a recipient that is directly generated by an activity under an award or earned as a result of the award during the period of performance. [2 CFR 200.307\(a\)](#) encourages non-Federal entities to earn program income to defray program costs where appropriate.

If program income is anticipated, the AO determines the most appropriate use of such program income and must state in the award how it will be used. [2 CFR 200.307\(e\)](#) specifies at least three approaches that an AO may use:

- 1) Deduction - Program income may be deducted from total allowable costs to determine net allowable costs. When using the deductive approach, the AO must

use program income for current costs, and the total award amount must be reduced by the amount of program income earned, rather than increasing the funds committed to the project.

- 2) Addition - Program income may be added to the award, increasing the total amount of the award. Program income must be used for the purposes and under the conditions of the award. The AO must not allow the use of the additive approach to program income if the applicant or recipient has:
- An inadequate or deficient cost accounting system, or is otherwise unable to adequately report or account for program income;
 - A history of frequent, large annual unobligated balances on previous awards; or
 - Requested multiple extensions of the final budget period of the project period.

If the AO determines that any of the above circumstances apply, the AO must not approve the additive approach but may consider another approach. The AO should also consider additional specific conditions, as specified in [2 CFR 200.207](#).

- 3) Cost-sharing - Program income may be used to meet any cost-sharing requirement of the award. When using this approach, the total amount of the award remains the same.

The AO must insert the applicable Standard Provision, "Program Income" in awards to both U.S. and non-U.S. NGOs.

303.3.11 Cooperative Agreements and Substantial Involvement

Effective Date: 12/23/2019

- a. When making an assistance award, the AO must select, in accordance with [ADS 304](#), either a grant or a cooperative agreement as the appropriate implementing instrument. The [Office of Management and Budget Final Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977](#), prescribes that Agencies "should limit their involvement in assisted activities to the minimum consistent with program requirements." Therefore, the AO must be satisfied that USAID's proposed involvement in an assistance activity is reasonable and necessary.

A cooperative agreement, as distinguished from a grant, provides for substantial involvement between the Federal awarding Agency and the recipient in carrying out the activity contemplated by the Federal award ([31 U.S.C. 6302-6305](#)).

OMB's Final Guidance also states that substantial involvement is a relative, rather than an absolute concept. Use of a cooperative agreement is primarily based on programmatic factors. USAID always has some administrative involvement in both grants and cooperative agreements for purposes such as monitoring performance, conducting site visits, reviewing reports, or providing approvals, such as those required by 2 CFR 200.308 and 2 CFR 700.16. "Substantial involvement" means involvement between USAID and the recipient that goes beyond such normal award administration and technical assistance (2 CFR 200.24).

In determining whether an award will need substantial USAID involvement, the AO must evaluate the type of overall relationship expected between USAID and the recipient and must not consider a single aspect or proposed involvement.

- b. The following are elements of the determination of substantial involvement:
 1. When a cooperative agreement is the selected award type, the Activity Planner must describe the substantial involvement anticipated during the performance of the award in the Selection of Instrument Memorandum. The DOT/PDT/PM or Planner must consult with the AO and describe USAID's interests so that the award adequately reflects the level of substantial involvement necessary. Additionally, the SOI Memorandum must directly and specifically tie each area of substantial involvement to an activity or activities in the program description to the AO's satisfaction. The AO must concur that the proposed involvement in an assistance activity is programmatically reasonable and necessary before deciding that a cooperative agreement is the appropriate instrument for the activity.
 2. The Notice of Funding Opportunity must describe the "substantial involvement" that USAID expects to have or should provide the reference to where the potential applicant can find that information.
- c. Factors applicable to both grants and cooperative agreements not considered substantial involvement during performance include the following:
 - Agency approval of recipient plans prior to award;
 - Normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to ensure the recipient accomplishes the objectives, terms, and conditions of the award;
 - Unanticipated Agency involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument;

- General statutory requirements understood in advance of the award, such as civil rights, environmental protection, and provision for the handicapped;
- Agency review of performance after completion; and
- General administrative requirements, such as those included in [2 CFR 200](#).

d. The difference between technical assistance and substantial involvement:

The Agency may provide technical assistance, guidance, or advice to the recipient during the period of the award to enhance collaboration or engagement with the recipient. Such technical assistance, guidance, or advice is not considered substantial involvement when:

- USAID provides it at the request of the recipient;
- The recipient is not required to follow it; or
- The recipient is required to follow it, but USAID provides it prior to the start of the award, and the recipient understands this prior to the award of the instrument, for example, when more frequent reporting is required, as allowed by 2 CFR 200.327 and 2 CFR 200.328 .

e. The examples of substantial involvement below are a guide, not a checklist. The AO must determine the appropriate level of substantial involvement based on the programmatic requirements of the award and include only those elements of substantial involvement as needed. Examples of potential areas of substantial involvement during performance include the following:

1. The Agency's approval of the recipient's implementation plans during performance. USAID generally only requires approval of implementation plans annually; however, where changed contexts or new information require a pivot in the activity, USAID may consider changes to an implementation plan. If the AO has delegated authority to the AOR to approve implementation plans, the AOR must review the agreement's terms and conditions to ensure the AOR does not approve inadvertent changes to them.
2. The Agency's ability to immediately halt an activity if the recipient does not meet detailed performance specifications (for example, construction specifications). These would be provisions that go beyond the suspension remedies of the Federal Government for noncompliance as stated in 2 CFR 200, including non-performance. The award must state that the AO may immediately halt an activity when identified

specifications are not met. The award must include the identified specifications when executed. The AO and Recipient must sign a bilateral amendment for any material changes to the specifications in the award.

3. The Agency's review and approval of one stage of work, before work can begin on a subsequent stage during the period covered by the cooperative agreement.
4. The Agency's review and approval of substantive provisions of proposed subawards or contracts (see definitions in 2 CFR 200). These would be provisions that go beyond existing policies on Federal review of recipient procurement standards and sole source procurement. [2 CFR 200.308](#) already requires the recipient to obtain the AO's prior approval for the subaward, transfer, or contracting out of any work under an award. This is generally limited to approving work by a third party under the agreement. If USAID wishes to reserve any further approval rights for subawards or contracts that go beyond existing policies on Federal review of grantee procurement standards, it must specifically state such Agency involvement in the substantial involvement provision of the agreement.
5. The Agency's involvement in the selection of key recipient personnel. This does not include provisions in assistance instruments for the participation of a named Principal Investigator for research projects.
6. The Agency and recipient collaboration or joint participation, such as when the recipient's successful accomplishment of program objectives would benefit from USAID's technical knowledge. There should be sufficient reason for the Agency's involvement and the involvement should be specifically tailored to support identified elements in the program description. Additionally, if the program will establish an advisory committee that provides advice to the recipient, USAID may participate as a member of this committee as well. Advisory committees must only deal with programmatic or technical issues, and not routine administrative matters.
7. Agency monitoring to permit specific kinds of direction or redirection of the work because of the interrelationships with other projects or activities. All such direction or redirection must be within the program description budget, and other terms and conditions of the award.
8. Direct agency *operational involvement* or *participation* to ensure compliance with statutory requirements such as civil rights, environmental protection, and provisions for the handicapped that

exceeds the Agency's role that is normally part of the general statutory requirements understood in advance of the award.

9. Highly prescriptive Agency requirements established *prior to award* that limit the recipient's discretion with respect to the scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with close monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.
- f. Only the AO may change or amend the program description, period of the award, total estimated amount or budget, and other terms and conditions of the award; however, the AO may delegate certain elements of substantial involvement to the AOR (see mandatory reference [ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative \(AOR\) for Cooperative Agreements and Grants.](#))

303.3.12 **Negotiation of the Award**

Effective Date: 05/18/2020

- a. **Review of Proposed Award Budget.** The AO must review the apparently successful applicant's budget to ensure that costs, including cost sharing, are in compliance with OMB's and USAID's policies. The recipient must justify in advance the proposed costs for each element of the program. If the recipient expects to earn program income during the award period, the schedule of the award must specifically state how the income will be applied. (The definition of program income is located in **2 CFR 200.80** and income application suggestions can be found in **2 CFR 200.307.**)

When reviewing costs, the AO must review the cost breakdown; and evaluate and analyze specific elements of costs for reasonableness and allowability of costs in the budget, and the allowability of the costs under the applicable cost principles. The review of the proposed budget helps the AO determine:

- (1) The extent of the prospective recipient's understanding of the financial aspects of the program and the recipient's ability to perform the grant activities within the amount requested;
- (2) Whether the applicant's plans will achieve the program objectives with reasonable economy and efficiency; and
- (3) Any special conditions relating to costs that are in the award.

The AO must determine the level of the cost review based on the nature of the program, the amount and type of costs involved, and past experience with the applicant. For example, if an assistance award contains construction, then the

AO must complete a detailed cost analysis for the construction component. AOs may use the templates found internally at <https://pages.usaid.gov/M/OAA/assistance-templates> to document cost review findings.

The AO may request M/OAA/Contract Audit and Support Division (CAS) assistance when reviewing the proposed budget. M/OAA/CAS could address whether the apparently successful applicant's budget is fair and reasonable for the proposed program, and whether the application is consistent with the Agency's cost accounting policies, procedures, and practices. This includes ensuring that the apparently successful applicant's indirect cost rates are consistent with any Negotiated Indirect Cost Rate Agreements (NICRA).

If the apparently successful applicant has never received a negotiated indirect cost rate, the recipient may choose to charge a de minimis rate of 10% of modified total direct costs (see 2 CFR 200.414(f)). If the prospective applicant chooses the de minimis rate, the AO must incorporate the 10% indirect cost rate in the award budget and the recipient must follow the requirements in 2 CFR 200.414(f).

The AO must negotiate with the applicant to resolve any issues related to proposed costs that do not comply with USAID policies before executing the award.

- b. File documentation.** The [Agency Secure Image and Storage Tracking \(ASIST\) System](https://pages.usaid.gov/M/OAA/assistance-resources) is the Agency's official electronic repository for all Acquisition & Assistance (A&A) award documentation. A&A staff must file all documentation relating to an award, from pre-solicitation through close out, in ASIST. AORs must also maintain their award administration files in ASIST. The requirements and procedures for filing award documents in ASIST, as well as standards for file documentation by award type are available internally at <https://pages.usaid.gov/M/OAA/assistance-resources>. The ASIST guidelines also contain guidance for maintaining older awards in the paper-based format. The AO must document the negotiation process for a new assistance award or an amendment of an existing award, along with other pre-award determinations in a Memorandum of Negotiation. AOs may use the applicable templates found internally at <https://pages.usaid.gov/M/OAA/assistance-templates>. The Memorandum of Negotiations must be included in the award file together with all applicable supporting documentation.

ADS 511, Essential Records Program requires that all essential records also be maintained in hard copy format. Most assistance awards will not meet the requirements of essential records. If the cognizant B/IO or Mission identifies the award as an essential record, in accordance with the procedures and criteria in ADS 511, AOs and AORs must also maintain the award and AOR files in hard

copy. The Agency's Essential Records Program is managed by the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD).

303.3.13 The Award Process and Elements of an Award

Effective Date: 12/23/2019

Before making an award, the AO must ensure that:

- The program description clearly identifies the purpose of the program, contains an implementation plan that specifically identifies each element of the program, and specifies the duration of the assistance instrument.
- All elements of the award – including items in the schedule such as period of performance, award amount, place of performance, and program description – clearly and coherently express the specific understandings of both parties.
- The Branding Strategy and Marking Plan meet regulatory and USAID policy requirements. If the Administrator has provided a written determination for use of an additional or substitute logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative, the AO must identify the alternate branding to be used in the award (see [2 CFR 700.16](#) or, for non-U.S. organizations, see the provision entitled “Marking and Public Communications Under USAID-Funded Assistance”).
- All representations and certifications are completed and current.
- All “specific conditions” are identified (see **303.3.9.2**).
- The award complies with all CFRs and Executive Orders in the mandatory references (**303.4**), the Standard Provisions, other ADS chapters, and other USAID guidance, as appropriate.

To avoid ambiguities and ensure the recipient's agreement, the AO must include in the award document all mandatory standard provisions and only those “Required as Applicable” standard provisions that are intended to be a term and condition of the award. The AO must determine which “Required as Applicable” standard provisions to include in the award using the guidance found in Applicability Statements of each “Required as Applicable” standard provision and the applicable mandatory references and additional help documents included with this chapter.

Before the award is signed, the AO must ensure that all of the elements of a legally binding agreement are present. These are:

- Competent parties,

- Proper subject matter,
- Sufficient consideration,
- Mutual understanding, and
- Agreement on the terms of the assistance instrument.

The AO's signature serves to obligate funds under a grant or cooperative agreement (see [ADS 621, Obligations](#)), as long as the AO accepts the recipient's application without substantial modification or negotiates any changes with the applicant. The AO will provide a copy of the grant or cooperative agreement to the recipient to ensure it agrees with the terms and conditions of the award. If the AO makes any substantive change to the program description or the budget or adds terms to the agreement that were not addressed during negotiations, such as a Substantial Involvement Understanding or "specific conditions" (see [2 CFR 200.207](#) and [303.3.9.2](#) and [303.3.11](#)), the AO must obtain the applicant's agreement to the changes or additional terms before obligating funds.

Prior to signing a grant or cooperative agreement, the AO must ensure that the entire award or amendment package is processed and generated in GLAAS, available only internally at <https://pages.usaid.gov/M/OAA/assistance-resources>. The negotiation memorandum must be documented accordingly. When the award is signed by all relevant parties, the AO or negotiator must upload a scanned copy of the fully executed award into the Agency Secure Image and Storage Tracking System (ASIST).

303.3.14 Duration of Assistance Awards

Effective Date: 05/18/2020

The period of performance of an assistance award must not be for more than five years at any one time, and not more than ten years from the original award date. For a total period of performance greater than ten years, the AO must prepare a written determination with a strong programmatic rationale to support the extended period of performance. The cognizant Mission Director (MD), Assistant Administrator (AA), or Head of an Independent Office, and the cognizant RLO or GC Bureau or Independent Office backstop attorney must clear the determination. Extensions other than those authorized by [2 CFR 200.308\(d\)\(2\)](#) are subject to the eligibility requirements of section [303.3.6.5](#).

303.3.15 Designation of the Agreement Officer's Representative (AOR)

Effective Date: 08/01/2019

An Agreement Officer's Representative (AOR) assists in the programmatic monitoring or administration of an award. The AOR designation is specific to a particular individual for the specified award. This authority is independent of any other roles, responsibilities, and duties the designee may fulfill in his or her technical capacity.

The AO must designate an AOR (and alternate, if applicable) for each grant or cooperative agreement as early in the award process as practical. The AO may not finalize an award until after they have signed the AOR designation letter in accordance with [ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative \(AOR\) for Cooperative Agreements and Grants](#) and received the signed AOR acknowledgement.

The Operating Unit (OU) must nominate an AOR as early in the planning process as possible. At the time of the award, the AO must identify the AOR by name in the Schedule of the award and enter the AOR's name in the Global Acquisition and Assistance System (GLAAS). When the award is executed, the AO must distribute the signed designation letter to the recipient, the paying office, the AOR and alternate, and other relevant parties. The signed designation letter must also be maintained in the award file.

In the event the AOR changes during the period of the award, the AO must re-issue the designation letter to the new AOR and receive the new AOR's acknowledgement. The AO must prepare a unilateral amendment in GLAAS to update the AOR designation, provide a copy of the signed designation letter along with the amendment to the recipient, the paying office and other relevant parties, and maintain a signed copy in the award file.

Before the AO designates the AOR and alternate AOR, the selected individuals must provide:

- Proof of a current certification in the [Federal Acquisition Institute Training Application System \(FAITAS\)](#);
- Proof of completion of the Agency specific training; and, if applicable
- Proof of completion of the required 40 hours of continuous learning.

a. Eligibility and Appointment

(1) In order to be eligible for designation as an AOR or an alternate AOR, the appointee must:

- Have a direct employee – employer relationship with the U.S. Government that allows him or her to perform inherently governmental functions. AOR eligibility is not based on the program which brought the individual into the Agency, (e.g. Fellows or Participating Agency Service Agreements (PASA), but on the individual's employment status). They must work for USAID as a(n):
 - Direct hire employee,

- Employee of another U.S. Government agency through an interagency agreement or on detail, or
- PSC (U.S. citizen or national, Foreign Service National or Third Country National).
- Be AOR certified through the Agency's mandatory training and certification program specified in paragraph b of this section.
- Possess experience commensurate with the responsibilities to be delegated.

(2) Approvals for Designating an Uncertified AOR

An uncertified AOR is an individual who has never been certified or an AOR whose certification has expired as a result of not having completed the mandatory continuous learning requirements discussed in **303.3.15.b**. In exceptional circumstances, the AO may designate an uncertified AOR with a written recommendation from the Mission Director (MD) for Mission executed awards, or the Bureau Deputy Assistant Administrator (DAA) for USAID/W executed awards. The MD or DAA may recommend the designation of an uncertified individual as an AOR for a period of up to six months. The recommendation must be in writing and in accordance with the [USAID Federal Acquisition Professional Accreditation & Re-Certification Program Standard Operating Procedure \(SOP\)](#).

The request must include:

- A description of the compelling circumstances requiring the exception,
- Affirmation that the individual has completed the Phoenix Accruals online course, and
- Confirmation from the individual and the individual's supervisor that the individual will complete the AOR certification and Agency training requirements within six months.

Recommendations for extensions of the designation of an uncertified AOR beyond six months can only be approved by the Director of M/OAA. This extension may be for an additional six months not to exceed a cumulative period of one year. The AO may designate an uncertified AOR only upon receipt of the appropriate written approvals.

b. Certification and Training Requirements

The Office of Human Capital and Talent Management, Center for Professional Development (HCTM/CPD), in coordination with M/OAA, established a Contracting Officer's Representative (COR)/ Agreement Officer's Representative (AOR) certification program (see [ADS 458, Training and Career/Professional Development](#)). Additionally, certification requirements include the successful completion of the following courses or the predecessor course:

- Acquisition and Assistance (A&A) Management for COR/AORs course (A&A 104);
- Introduction to the Program Cycle (IPC);
- Web-based Phoenix Accruals online course;
- Web-based COR/AOR online course; and
- ASIST/GLAAS Filing Overview course.

M/OAA's Professional Development and Training Division (M/OAA/PDT) maintains a record of the qualifying predecessor courses.

In order to maintain the AOR certification, the AOR must complete 40 hours of continuous learning points (CLPs) every two years from the initial certification. If the AOR fails to complete the required CLPs the AOR's certification will lapse and the AOR will no longer have the authority to perform the functions of an AOR.

(1) Exceptions:

The following individuals may be designated as AORs without completion of the COR/AOR certification program:

- Warranted Contracting/Agreement Officers;
- Procurement Management Certification Program (PMCP) certified individuals; and
- Federal Acquisition Certification in Contracting (FAC-C) certified individuals.

However, the individuals must still complete the Web-based Phoenix Accruals online course, and be certified in FAITAS, before the AO can designate the individuals as AORs.

c. Issuing the AOR Designation Letter

AOs must use the Standardized Designation Letter, essentially as written, to appoint an AOR. AOs may tailor the letter in accordance with guidance provided in [ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative \(AOR\) for Cooperative Agreements and Grants](#).

The AO may also designate an alternate AOR to perform AOR duties during the absence of the AOR. The alternate must meet the AOR certification requirements and be appointed by designation letter, preferably the same letter as the AOR.

d. Limitations on AOR Authorities

AOR authority does not include communicating with the recipient, either in writing or verbally, or otherwise committing to changes that affect the program, cost, period of performance, or other terms and conditions of the award. Only an AO has the authority to take such actions. The Standardized Designation Letter further states the specific limitations of the AOR designation.

AORs may enlist the assistance of others to:

- Conduct fact finding;
- Provide analyses or interpretations of programmatic requirements; and
- Make recommendations, among other assistance that may be sought.

However, the AOR remains accountable for the delegated responsibilities and is the only person authorized to carry out the functions described in the AOR designation letter.

The AOR is not authorized to further delegate this authority. If neither the AOR nor the alternate is available to perform their duties, the AOR must direct the recipient to the AO for guidance. No other individuals are authorized to approve recipient payment requests or perform other AOR functions.

e. Revocation of an AOR Designation

The AOR designation is effective for the duration of the award unless otherwise specified; is subsequently revoked by the AO; or the AOR's certification expires for failure to complete the required continuous learning points. AOs have the authority to revoke a designation letter in writing at any time if an individual's performance as an AOR is unsatisfactory. AOs must revoke a designation letter and appoint a new AOR if the AOR:

- Is assigned to a new post or position unrelated to the award,

- Fails to maintain the AOR certification by completing the required continuous learning points every two years after the initial AOR certification, or
- Has not completed the certification program within the time specified for AORs who are designated under the exceptional circumstances listed in **303.3.15.a.(2)**.

In the event that the AOR's certification expires the AOR must inform the AO of the expiration. The AOR must not continue to perform AOR duties, even if the AO has not formally revoked the AOR's designation, as it may result in unauthorized commitments as the AOR will be acting without authority. The AOR will be held accountable and must accept responsibility for any unauthorized action and must assist the AO in processing all documentation required to formalize the commitment.

303.3.16 Congressional Award Notice System

Effective Date: 02/20/2009

The Congressional Award Notice System requires the AO to notify the Bureau for Legislative and Public Affairs (LPA) when they make certain awards to U.S. organizations.

- a. AOs must follow the notice procedures in [ADS 302man, Congressional Award Notice](#). This requires the AO to provide notice to LPA AFTER signing but BEFORE releasing, or allowing to be released, an announcement of the awards listed below. This restriction on announcing the award applies to notifying the awardee that the award has been signed. For further details, see Section II, Other Considerations of that same document.
- b. Types of awards that require notice include the following:
 - (1) Awards of any value to an organization that has not previously received an award from USAID.
 - (2) Any award with which there was Congressional correspondence during the pre-award stage. The Bureau for Legislative and Public Affairs (LPA) will alert the AO that such correspondence has occurred, and the AO will flag the award as falling under these notice criteria and procedures.
 - (3) Any award for a particular program or geographic region that the operating unit or LPA identifies as being of particular interest to Congress, the Agency, or the general public; for example, earthquake relief in Haiti or the international HIV/AIDS program. LPA will coordinate with its liaison in the operating unit to identify these awards and will alert the operating unit, the AO, or both of them at the earliest opportunity before the award decision.

- (4) Grants, cooperative agreements, and any amendment to them with a total estimated amount or increase in the total estimated amount of US \$500,000 or more, respectively. Amendments providing only incremental funding (and involving no increase to the award amount) are not included.

303.3.17 Distribution of Awards

Effective Date: 06/01/2006

Generally, distribution of awards is at the discretion of the AO. At the minimum, a copy of the agreement document and all amendments to the award must be part of the official award file and provided to the:

- Recipient,
- AOR,
- Office responsible for payment under the agreement, and
- Accounting station, if it is different from the office responsible for payment.

If payment is by letter of credit, the AO must immediately send a scanned copy of the award and any amendment by email to the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP) at the Letter of Credit Activity mailbox: **loc@usaid.gov**. Because the funds are obligated when the AO signs the award, the AO should not obtain the recipient's signature before sending the award to M/CFO/CMP. The AO must provide M/CFO/CMP with the signed award letter or amendment cover page, accounting and appropriation data, and the schedule. The AO must send the award or amendment to M/CFO/CMP within 10 business days after signing it.

303.3.18 Award Administration

Effective Date: 05/18/2020

Award administration includes all interactions concerning the award between USAID officials and the recipient from the time the award is made until the end of USAID support. The specific nature and extent of award administration varies from award to award in the normal exercise of Federal responsibilities. It ranges from reviewing and analyzing performance reports and performing site visits to specific elements of substantial involvement by USAID under a cooperative agreement.

The Agency's role in administration is limited to measuring and evaluating the recipient's progress and any appropriate substantial involvement. The Agency and its representatives must not control or try to control the recipient's or any subrecipient's day-to-day management of the program.

- a. **Administrative Duties.** The AOR and the AO share in the oversight of an assistance award. It is essential that they work as a team in order to administer the grant or cooperative agreement effectively. While there is a clear division of responsibility between the functions, AO and AOR functions are closely related and cannot be performed in isolation from each other. Both the AO and AOR's actions must be limited to monitoring the recipient's progress in achieving the objectives of the program description and verifying that the activities being funded by USAID conform to the terms and conditions of the award.

Within 45 calendar days of the completion date of the award, the AOR must review the recipient's performance by completing the mandatory [Performance Review](#) template. Once completed, the AOR must submit the performance review to the AO for review (see [Performance Review](#) for additional procedures).

The AO, and AOR as delegated, provide oversight of the financial management aspects of the award through reviews of reports, correspondence, site visits, or other appropriate means. When necessary, the AO will request or arrange for special audits. The AO is responsible for all award suspensions and terminations, except for terminations based on national interest, which the Assistant Administrator has authority over.

If program income is anticipated to be earned under the award, it should be addressed in Section D of the RFA or APS and documented in the award. As part of an AOR's financial management responsibilities, the AOR is responsible for monitoring program income throughout the life of the award. (See **2 CFR 200.307** or, for non-U.S. organizations, see the provision "Program Income.")

The AO should give a post-award orientation to the recipient and AOR to clarify the roles and responsibilities of the USAID officials who will administer the award. The AO may delegate specific authority to the AOR and must notify the recipient in writing of the delegation, either in the schedule of the award or by letter. The AO must ensure that the award does not include administrative approvals that are in conflict with the regulations and policies of **2 CFR 200** and **2 CFR 700**, [ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations](#), and [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#). If the AOR becomes aware of any other administrative requirements imposed on the recipient, the AOR must immediately notify the AO.

The AO is the records custodian for all official communication that constitutes an amendment of the award. The AOR must keep the AO informed of the recipient's performance. The AOR must ensure that the AO receives copies of all performance and financial status reports, as appropriate. The AOR reviews all performance and financial reports for adequacy and responsiveness. When

reports are not on time, inadequate, or some other problem becomes apparent, the AOR advises the AO to take the necessary action.

The AOR must ensure that the recipient submits reports or deliverables under the award to the DEC. The types of documentation the recipient must submit are found in [ADS 540.3.2.5, Documentation Grantees Submit to the Development Experience Clearinghouse \(DEC\)](#). Documentation that is not considered development experience material is described in [ADS 540.3.2.6, Documentation Agency Contractors Must Not Submit](#). [ADS 540.3.2.11, Where to Submit Development Experience Documentation](#), provides the Web site and mailing address for submitting material. Additionally, the AOR must ensure that recipients submit data to the Development Data Library in accordance with [ADS 579](#).

When an amendment to the award is necessary, the AOR must prepare the necessary internal documentation to support the amendment and meet the satisfaction of the AO.

- b. Site Visits.** Site visits are an important part of effective award administration because they usually allow a more effective review of the project. Joint visits by the AO and the AOR are encouraged. When the AO or AOR makes a site visit, the AO or AOR must write a brief report highlighting the findings and file the report in the official award file in ASIST.
- c. Award Amendments and Programmatic Changes.**

Any amendments to the award must be made in accordance with [2 CFR 200](#).

1. Unilateral Amendments

An unilateral amendment means an “administrative change” by a written amendment that does not affect the substantive rights of the parties. Only the AO needs to sign a unilateral amendment. The AO may execute the following types of unilateral amendments without any further approvals:

- Incremental funding actions;
- An extension authorized by [2 CFR 200.308\(d\)\(2\)](#); and
- Other administrative changes, like changes to the AOR, award administration office, payment office, and other non-substantial changes.

2. Bilateral Amendments

Bilateral amendments are those that change the stated terms of the award and require the AO to amend the award. A bilateral amendment is an amendment signed by the AO and the recipient. Bilateral amendments reflect the agreement of the parties to change a term or terms of the award when it is in the mutual interest of both the Agency and the recipient. Bilateral amendments include changes that:

- Extend the period of the award beyond what is authorized in [2 CFR 200.308\(d\)\(2\)](#);
- Increase the Total Estimated Amount or revise the budget (subject to approval requirements of sections **303.3.6.4** and **303.3.6.5**);
- Alter the explicit purpose or objectives of the award; or
- Establish new or different program objectives.

3. Programmatic Changes

Not all programmatic changes affect the terms of the award itself or require amendments to it. As stated in the Program Cycle Principles in ADS 201.3.1.2, “USAID must be able to readily adapt programs in response to changes in context and new information.” The AOR is responsible for using Collaborating, Learning, and Adapting (CLA) approaches to maximize program results. As such, the AOR, as delegated by the AO, may approve revisions to the recipient’s implementation plan as formally requested by the recipient and when consistent with ADS 303.3.11’s guidance on technical assistance or substantial involvement. Such requests could arise through formal processes, such as annual or semi-annual workplanning, or informal processes, such as “pause-and-reflect” opportunities.

Examples of revisions may include the following:

- Adding or changing the number or type of interventions, or discontinuing particular interventions described in the implementation plan that are no longer effective or critical to achieving the programmatic objective; and
- Adding or changing the geographic focus of particular interventions, provided that it is not outside the geographic scope defined in the award.

d. Terminations.

AOs must notify the Suspending and Debaring Official (SDO) and the Bureau for Management, Office of Management Policy, Budget, and Performance (M/MPBP), Compliance Division in writing at least five days prior to proceeding with a termination based on failure to comply with the terms and conditions of an

award. The AO must provide the following information to the SDO at **compliance@usaid.gov**:

- Recipient's name;
- DUNS No.;
- Full Street Address;
- Award number;
- Period of Performance;
- AO and AOR names;
- Award value; and
- Reason for termination.

303.3.19 Unauthorized Commitments and Expenditures Requiring Prior Approvals

Effective Date: 06/01/2006

- a. Unauthorized Commitments.** When a USAID official, who does not have the authority to do so, acts in a way that leads a recipient or potential recipient acting in good faith to believe that USAID has committed to make a specific award; change the amount of an existing award; or, revise an existing award budget, program description, or any of the terms and conditions of the award, the official has made an unauthorized commitment. It is against U.S. Government and USAID policy to enter into unauthorized commitments.

When the AO believes that an unauthorized commitment should be ratified and recommends payment, and the cognizant General Counsel or Resident Legal Officer concurs with the recommendation, the AO submits an action memorandum through the M/OAA/Evaluation Division to the Director, M/OAA, for ratification. The memorandum must show:

- Evidence that the grant would otherwise have been proper, if made by an appropriate AO;
- The AO reviewing the unauthorized commitment must determine the cost to be reasonable;
- The provided program has furthered USAID's objectives;

- The findings of facts essential to the situation, arranged chronologically with cross references to supporting enclosures;
- The nature of the unauthorized commitment and funds citation;
- Funds are available and were also available at the time the unauthorized commitment was made;
- The recommended disposition; and
- A written statement from the person who made the unauthorized commitment. This statement must detail how the mistake occurred, what training the individual has received from the AO on proper procedures since the incident, and what steps will be taken to prevent future unauthorized commitments.

Only the Director, M/OAA, has the authority to ratify unauthorized commitments.

- b. Expenditures Requiring Prior Approval.** Recipients must comply with prior approval requirements that are established in the agreement. Failure to comply with prior approval requirements generally causes USAID to deem the costs unallowable.

When it is in the best interest of the Federal Government and funds are available, the AO may review the facts and circumstances of the expenditure made without prior approval and approve the expense if the:

- Expenditures must be otherwise allocable, allowable, and reasonable.
- AO could have approved the expenditures at the time that they were made.
- AO has the authority to approve the same type of expenditure at the time of the request for approval.
- Approval promotes efficient implementation of USAID's program, or
- Facts and circumstances of the expenditure show that the recipient was not grossly negligent and did not intend to circumvent USAID requirements.

The recipient must submit a written request to the AO addressing the criteria set out above and the AO must make a written determination.

303.3.20 Controlling Language

Effective Date: 06/01/2006

It is USAID policy that English is the official language of all award documents because a translation may not convey the full meaning of the original. If an award or any supporting documents are provided in both English and a foreign language, each document must state that the English language version is the controlling version.

Source and Nationality Rules

- (1) **22 CFR 228** “Procurement of Commodities and Services Financed by USAID Federal Program Funds” is the regulation that governs the source and nationality of goods and services procured with USAID funds. This regulation applies to USAID-financed goods and services procured by a recipient and subrecipients (see the provision entitled “USAID Eligibility Rules for Goods and Services” in the Standard Provision for U.S. Nongovernmental Organizations and Standard Provisions for Non-U.S. Nongovernmental Organizations). **22 CFR 228** provides those circumstances to which Source and Nationality rules do not apply.
- (2) **22 CFR 228** does not apply to the selection and award of subawards as defined at **2 CFR 200.92**.

303.3.21 Subawards

Effective Date: 12/23/2019

a. Approval of Subawards

Only the AO may approve subawards. Prior to providing subaward approval (see 2 CFR 200.308c(vi)), the AO must obtain confirmation from the recipient that a risk assessment has been conducted for the proposed subrecipient(s) by name, including the recipient’s verification that the subrecipient(s):

- 1) Does not have active exclusions in the System for Award Management (SAM) (www.sam.gov);
- 2) Does not appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the “OFAC List” (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>; and
- 3) Is not listed in the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

b. Subawards to PIOs and Partner Government Entities

If appropriate, a recipient may enter into a subaward with a Public International Organization (PIO), and in exceptional circumstances with a partner government entity (also known as a partner government implementing entity as defined in [ADS 220](#)).

Subawards that provide funds (excluding "in-kind" grants, technical assistance or other activities provided to or on behalf of the partner government entities) to partner government entities for activities to be implemented by the entity must meet the conditions, requirements, and approvals outlined in this section. The requirements in this section do not apply to subawards to a partner government entity solely for "in-kind" contributions, technical assistance, or other activities provided by the recipient to or on behalf of the partner government entity.

c. Approval of Subawards to Partner Government Entities

Prior to an AO approving a subaward that provides funds (excluding "in-kind" grants, technical assistance and other activities provided to or on behalf of the partner government entity) to a partner government entity for activities to be implemented by that entity, the AO must verify that these types of subawards have been approved either in:

- (1) The Project Appraisal Document (PAD) (or PAD amendment) ([ADS 201](#)); or
- (2) A Determination and Finding (D&F), as outlined below.
 - (a) If the Operating Unit (OU) has not addressed subawards to partner government entities in the PAD (or PAD Amendment), the OU must prepare a D&F that documents:
 - (i) How a subaward to a partner government entity is consistent with the decisions and results under the Public Financial Management Risk Assessment Framework (PFMRAF), if any (see [ADS 220](#));
 - (ii) How the subaward will contribute to sustainability other than in cases where immediate development results outweigh sustainability goals;
 - (iii) That there are no alternative means to achieve the foreign assistance purpose other than through subawards to partner government entities; and
 - (iv) That any partner government subrecipient financial risks identified by the recipient will be mitigated or addressed in the subaward.

- (b) The D&F must be prepared by the OU and cleared by the RLO/GC, AO, and M/CFO/Mission Controller. The D&F must be approved by the Mission Director for subawards under Mission executed awards, and by the cognizant Pillar Bureau Assistant Administrator, in consultation with the relevant Regional AAs, for subawards under USAID/Washington executed awards. The OU must provide a copy of the signed D&F to the AO to be included in the award file.
- (c) The subaward must include language that captures the audit, monitoring, reporting, and oversight requirements in the recipient's award. This is not subject to deviation. The subaward must also include the appropriate flow down requirements from the prime award.
- (d) All D&Fs must be approved by the Bureau AA and the AA for Management. It is USAID policy to increase its direct assistance to partner governments to achieve sustainable development results. No prime award may contain subawards that provide funds to partner government entities unless a D&F as specified paragraph b.(2) above is approved by the cognizant Bureau AA (in consultation with relevant Pillar or Regional AAs, as applicable) and the AA for Management, prior to subaward approval by the AO. Before any subsequent subawards to partner government entities are made, the D&F must include a statement of the actions the OU will take to increase direct assistance to partner governments.

d. **Applicable Standard Provisions**

A U.S. recipient providing a subaward to a non-U.S. organization must use the Standard Provisions for a Non-U.S. Non-Governmental Organization. A non-U.S. recipient providing an award to a U.S. organization must use the Standard Provisions for U.S. Non-Governmental Organizations. For subawards to PIOs, the recipient must use the Standard Provisions for Cost-Type Awards to PIOs in [ADS 308, Awards to Public International Organizations](#).

For subawards to partner government entities, in addition to the requirements in Section 303.3.21.a.(2)(c) above, the prime awardee must flow down the appropriate terms and conditions to meet the requirements of the prime award. For additional information on standard terms and conditions relating to Government-to-Government agreements, see the Additional Help Documents found in ADS Chapters 220. When questions arise concerning the appropriate provisions for subawards, the AO must consult with the cognizant attorney in GC or the cognizant RLO. An approved deviation (**303.3.3**) is required before the recipient may deviate from the terms and conditions of its award from USAID;

however no deviation will be authorized from the audit, monitoring, reporting, and oversight mandatory and applicable standard provisions and requirements in **303.3.21a(2)(c)**.

c. Defense Base Act Insurance

The Defense Base Act does not apply to grants and cooperative agreements nor to subawards under these instruments. Although the Defense Base Act rate does not apply to grants and cooperative agreements, recipients who desire to purchase DBA coverage may negotiate rates at the discretion of the insurance carrier (see [ADS 302sap, Guidelines for DBA Coverage for Direct and Host Country Contracts](#)).

Recipients must require contractors who are awarded procurement contracts under the assistance instruments to obtain Defense Base Act coverage for their employees performing services overseas.

303.3.22 The Role of the Agreement Officer in the Debt Collection Process

Effective Date: 08/22/2013

The Federal Claims Collection Act of 1966 and the [Debt Collection Improvement Act of 1996 \(DCIA\)](#) mandates that agencies comply with standard, Government-wide debt collection procedures and centralize the Government-wide collection of delinquent debt. USAID's policy on debt collection can be found in [22 CFR 213](#), Claims Collection; [2 CFR 200.345](#), Collection of Amounts Due; and [ADS 625, Accounts Receivable and Debt Collection](#) (see [ADS 303san, Agreement Officer's Role in Debt Collection](#) for additional guidance.

The AO is responsible for determining if a debt is owed by the recipient and the amount of the debt owed. Preferably, the amount of the debt will be determined by a negotiated settlement between the AO and the recipient. However, if the parties do not agree on the amount, the AO must unilaterally determine the amount of the debt (see [625.3.4.1 Claims Originating Under Acquisition and Assistance Instruments and 625.3.4.2 Claims Originating Under Financial Audit](#).) If the recipient disagrees with the AO's determination, see **303.3.23** below.

The AO must promptly issue a demand letter for payment of such debt. A proper written notice ensures the Agency has a legally enforceable debt. The initial demand letter must include the appropriate information and due process procedures contained in [22 CFR 213.9 – Written Notice](#). Even if the debt is or will be the subject of a bilateral amendment or the recipient has agreed to repay the debt, the AO must issue a demand letter as soon as the AO has determined that an actual debt is due. The AO must send a copy of each demand letter to the cognizant billing office immediately upon issuance, and request acknowledgement of receipt. Collection of the debt is the responsibility of the billing office (Mission Controller or M/CFO/WFS).

If the recipient requests approval of installment payments, see [22 CFR 213.19 Installment Payments](#) for relevant regulations and procedures.

303.3.23 Disputes and Appeals

Effective Date: 06/18/2012

[2 CFR 700.15](#) and the [ADS 303mab, Standard Provision for Non-U.S. Nongovernmental Organizations](#) “Disputes and Appeals” establishes that the AO decides any dispute between the recipient as defined in 2 CFR 200.86, and USAID arising under the assistance award. The AO’s decision is final unless the recipient appeals the decision as outlined below.

303.3.23.1 Disputes

Effective Date: 06/01/2006

The AO must give the recipient a written final decision within sixty (60) calendar days of receiving notice from the recipient of a dispute. If the AO is not able to reach a final decision within that time, the AO must notify the recipient that the AOR requires more time to consider the dispute. The AO must place a copy of the final decision in the award files.

303.3.23.2 Appeals

Effective Date: 07/22/2015

If the recipient disagrees with the AO’s final decision, the recipient may appeal the AO’s decision to the Assistant Administrator, Bureau for Management, or designee. The appeal must be in writing and must be postmarked within thirty (30) calendar days of receipt of the AO’s final decision. The recipient must include all relevant and material evidence to support its position and must provide a copy of the appeal to the AO. If USAID has issued a Bill of Collection, the Bill of Collection may be suspended in accordance with [ADS 625](#) pending resolution of the appeal.

Immediately upon receiving an appeal, the Assistant Administrator, Bureau for Management, or designee, and the AO must forward the appeal to the Bureau for Management, Office of Management Policy, Budget, and Performance, Compliance Division (M/MPBP/Compliance) at **compliance@usaid.gov**. M/MPBP/Compliance will:

- Consult with other divisions within M/OAA as needed before preparing a recommendation for the deciding official; and
- Coordinate a review by GC/A&A and/or GC/LE.

Within sixty (60) calendar days of receiving the appeal, M/MPBP/Compliance must notify the recipient of the status (i.e., denied, approved, or more time is needed).

303.3.24 Types of Assistance Instruments

Effective Date: 12/23/2019

Agreement Officers must structure assistance awards in the manner that best achieves programmatic results while complying with regulation and policy. The AO has flexibility in determining the type of award instrument in accordance with the methods for structuring assistance awards found in [2 CFR 200](#), [2 CFR 700](#), and this ADS chapter, including:

- Renewal Awards;
- Simplified Grants;
- Fixed Amount Awards (see [2 CFR 200.45](#)); and
- Leader with Associate Awards.

During the Planning Phase, the Agreement Officer and the Activity Planner make a determination on the duration and type of instrument (see [ADS 201, Program Cycle Operational Policy](#)). The Foreign Assistance Act of 1961, as amended (FAA), authorizes the Agency "... to make grants to make and perform agreements ... in furtherance of the purposes and within the limitations of the Act." The Federal Grants and Cooperative Agreements Act requires that a type of grant agreement must not be used to acquire property or services for the direct use or the direct benefit of the United States Government.

When the AO has determined that an award will be an assistance instrument, the AO must then determine whether it should be a grant or cooperative agreement (see [2 CFR 200.24](#) and [2 CFR 200.51](#) for the full definition of a cooperative agreement and a grant, respectively).

a. Renewal Awards

A renewal award (grant or cooperative agreement) allows a grant or cooperative agreement to adapt, within the five-year maximum period of performance, to changing contexts, lessons learned during implementation, and performance by related activities within a project that affect the overall effectiveness of the initial award. A renewal award provides a specific level of support for an initial specified period of time or an initial set of programmatic activities and milestones, with a statement of intent in the NOFO of the possibility of a subsequent award to provide additional support for the project for succeeding periods, activities, or milestones. The Agency may renew these awards provided funds are available, the results achieved warrant further support, and the recipient meets any other renewal conditions specified in the award. Renewal awards are also known as "continuation grants." A renewal award allows for the continuation of

an award beyond its initial period, but not to exceed the total period of performance specified in the original award. Renewal awards may also allow for the continuation of an award beyond initial activities or initial milestones. A renewal award requires the recipient to reapply at a specified point(s) during performance to continue the award. As part of the re-application, the Agency may revise the award and define further activities within the general program description of the award.

Determining whether a renewal award is appropriate

Use of a renewal award allows an activity to be approved for a multi-year period (up to five years), or for additional activities or milestones within the five-year period. This approach allows for adaptability of an activity, through redirection and establishment of new targets. However, this approach may be more labor intensive for both the Operating Unit and the recipient as the award has to be renewed for the additional period or activities. The AO should consider whether the benefits of this approach to a particular activity outweigh the additional administrative burden; for example, when performance targets cannot be established at the initial award but will be set on an annual basis. This approach may help the Agency and recipients to respond to contextual changes and lessons learned in, for example, highly fragile, high-risk, or conflict-sensitive environments.

Publicizing

The NOFO must establish the initial period of the award, describe the timeframe for the recipient to request renewal, and specify the period of performance covered by the initial period and all renewal periods. The NOFO and any resulting award must specify when the recipient must submit the renewal application(s). The NOFO and any resulting award must specify the process and criteria for renewal, and the content of the recipient's request for renewal. [2 CFR 200 Appendix I](#), identifies Section B of the NOFO as the place to address whether applications for renewal of existing awards must be considered along with applications for new Federal awards.

Renewals

The AO may renew the award following the process and criteria established in the NOFO and the award. The AO must not renew the award on a non-competitive basis beyond a five-year period of performance or other renewal conditions without a restricted eligibility determination as required in **303.3.6.5**.

Renewals with limited competition

The AO may also renew an award by using a process for limited competition among a specified group of recipients. For example, the Agency may make the initial award to multiple recipients and the AO could provide for an award renewal only for the recipient(s) determined most successful in the initial award.

Timing of renewals

The Agency must not schedule renewals more frequently than annually, and the AO must designate a renewal timeframe that provides sufficient time for reviewing the renewal request prior to the scheduled expiration of the award period. The AO should generally not establish an initial award period of less than two years so the recipient has sufficient time to start up and achieve initial results; however, the initial award period will depend on the nature of the activity. If the Agency does not renew an award, the AO must allow sufficient time for the recipient to complete the program responsibly before expiration. The start date of the renewal period must be concurrent with the original expiration date to prevent a break in the activities or funding. If the renewal expands the award's activities, AO must renew the award to allow sufficient time for the successful completion of the expanded activities.

Process and criteria for renewal

The NOFO and any resulting award must include a statement that funding of any renewal period or expansion of activities is contingent on the following:

- Availability of funds;
- Satisfactory progress towards meeting the award objectives;
- Submittal of required reports; and
- Compliance with the terms and conditions of the award, including the conditions for renewal.

The AO may renew the award through an amendment for a subsequent period of performance or additional activities. The AO must require the recipient to submit a new [SF-424](#) and a new set of certifications, assurances, representations, and other statements (see **303.3.8, Pre-Award Certifications, Assurances, Representations, and Other Statements of the Recipient and Pre-Award Terms**) with the request for renewal or renewal application. The AO must also follow all other pre-award requirements prior to executing the renewal. The initial award and the renewal together must be consistent with **303.3.14**.

Before the AO can approve the renewal and amend the agreement, the AOR must review the renewal application(s) and document that:

- The recipient has met performance and progress in a satisfactory way and still merits support;
- Program activities are still relevant to the Agency's objectives;

- The renewal will support either the same work, or work that is within the programmatic activities of the current award or is closely related to the current programmatic activities;
- The renewal supports the same long-term goal, with new specific targets, milestones, outputs, or indicators; and
- The recipient meets the required risk-assessment requirements.

The cognizant AOR should discuss renewal applications with the recipient prior to submission.

b. Simplified Grants

A deviation is not required from the requirements of **2 CFR 200** or the policies of this chapter in order to use a Simplified Grant for small awards on a cost reimbursement basis as described below. For Fixed Amount Awards, see **303.3.25**. Except as discussed in paragraphs **a** through **h** below, a grant using the Simplified Grant Format generally does not include any of the Standard Provisions used for USAID grants.

USAID may authorize advance payments if the conditions for advance payments in [ADS 636, Program Funded Advances](#) and **2 CFR 200** Subpart D apply.

The AO may award a Simplified Grant, if the grant meets all of the following conditions:

1. The assistance instrument is a grant, not a cooperative agreement.
2. The total grant amount does not exceed the simplified acquisition threshold as defined in 2 CFR 200.88.
3. The recipient will not purchase any goods or services, except as authorized pursuant to [22 CFR 228](#) or [ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID](#) or any applicable waivers, and the recipient will not purchase any single item that has a useful life over one year and a cost of \$5,000 or more.
4. The recipient has signed pre-award certifications as required in **303.3.8**.
5. The grant requires the recipient to allow USAID access to its records for up to three years after the end date of the grant, and the recipient will refund USAID for any funds it receives for any costs that did not meet the terms and conditions of the grant.

6. The Simplified Grant Format is only authorized when all costs under the award are direct costs. This format is not authorized for awards that include indirect costs.
 7. The AO may modify the Simplified Grant Format as long as the agreement includes the applicable Standard Provision for related costs in the small grant award, and if the support of international travel or the purchase of equipment is necessary for performance of the grant.
- c. The grant must be included in any audit required by **2 CFR 200** or [ADS 591.3.2](#).

303.3.25 Fixed-Amount Awards to Non-Governmental Organizations

Effective Date: 12/23/2019

A fixed-amount award is a type of assistance award in which USAID provides a specific level of support and for which the Agency does not base payment upon the actual costs incurred by the recipient. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and USAID. Accountability is based primarily on performance and results.

A fixed-amount award is appropriate for supporting projects with very specific and defined elements, when the AO is confident that a reasonable estimate of the actual cost of the overall effort can be established, and USAID can define accomplishment of the purpose of the grant through defined milestones.

It is essential that 1) the program scope is specific and 2) adequate cost, historical, or pricing data is available to establish a fixed amount award with assurance that the recipient will realize no increment above the actual cost.

Because payments under fixed-amount awards are based on the achievement of milestones, the structure of the payments is very important. USAID pays the recipient a set amount when it accomplishes a milestone. The AO may follow the guidance in [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#) for structuring the grant milestones to provide the recipient with the necessary financial liquidity for the performance of the activity.

USAID may also authorize advance payments when recipients meet the conditions for advance payments in [ADS 636](#), **2 CFR 200 Subpart D**, and if providing liquidity through an initial financing milestone is not sufficient to meet implementation requirements.

The procedures in this ADS section, [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#), and [ADS 303mak, Fixed Amount Award Entity Eligibility Checklist](#) must be used in lieu of those specified in **303.3.9**. The criteria in the section of the Checklist for pre-award financial review for advances, adequately address the conditions for advances in [ADS 636](#) and **2 CFR 200 Subpart D**.

Grant closeout is accomplished by the AOR's acceptance of the final milestone and approval of payment.

a. Factors for Determining the Use of a Fixed-Amount Award

In order for an AO to use a fixed-amount award, the following conditions apply:

- (1) The award complies with the conditions for fixed amounts awards found at 2 CFR Part 200.201.
- (2) The assistance instrument is a grant, not a cooperative agreement.
- (3) The AO, technical office, and M/CFO (Washington) or Controller (overseas) have complied with the requirements of [ADS 303mak, Fixed Amount Award Entity Eligibility Checklist](#), including ensuring that the recipient has signed pre-award certifications, as specified in **ADS 303.3.8**.
- (4) The prospective recipient, technical office, and AO must be able to identify and quantify programmatic accomplishments or results in establishing grant milestones. For further guidance, see [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#).
- (5) The AO, with the advice of the technical office and M/CFO (Washington) or the Controller (overseas), must assess the risk factors that could prevent the proposed recipient from completing the activity or require a substantial change in the milestones. The operating unit must not use the Fixed Amount Award mechanism if there is an unacceptably high risk of failure or substantial changes in the milestones are expected as the recipient implements its program. The AO and technical office must document the risk assessment and may use the guidance in [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#).
- (6) Adequate cost information must be available to allow the AO to determine and negotiate the fixed amount of the grant and payment structure. The fixed amount should include all reasonable costs, as determined by the AO. For further guidance concerning the cost information required and payment structuring, see [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#) and [ADS 303mak, Fixed Amount Award Entity Eligibility Checklist](#).
- (7) The AO must document the rationale for selecting the Fixed Amount Award mechanism.
- (8) The duration of the Fixed Amount Award must not exceed three years.

- (9) The Fixed Amount Award must not include the purchase of any real property.

b. Required Provisions for a Fixed Amount Awards

- (1) The AO must ensure that the Fixed Amount Award includes all of the Mandatory Provisions from [ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#). In addition, the AO must ensure the Fixed Amount Award includes ONLY the applicable “Required, As Applicable” provisions from [ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#).
- (2) The AO must use the [ADS 303sal, Sample Fixed Amount Award](#) as a template.

c. Amending Milestones

The AO may amend milestones during the period of the grant, if the original milestones are no longer feasible or appropriate due to circumstances beyond the control of the recipient, and if the amended milestones are compatible with and satisfy the original purpose of the grant. The AO may terminate the grant if the AO concludes that multiple or substantial amendments indicate that continuing the grant is no longer in the best interests of the Agency. For additional guidance, see [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#).

d. Disposition of Equipment or Property

Recipients must not procure real property under a Fixed Amount Award. Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment. Personal property is any tangible or intangible property other than real property.

Depending on the activities funded and milestones established by the Fixed Amount Award, a recipient may procure equipment or personal property in order to accomplish a milestone. The distinction between whether purchase of the equipment or personal property is a milestone or is one possible means by which the recipient may accomplish a milestone is important for certain aspects of the award. Unless a milestone is itself the purchase of the equipment or personal property, milestones must not list equipment or personal property a recipient may potentially purchase to accomplish the milestone, but the costs of such equipment or personal property may be included in the budget from which milestone payment amounts are estimated and negotiated. Regardless of whether the equipment or personal property is listed in or as a milestone, the Fixed Amount Award must state that title to the equipment or personal property vests in the

recipient upon acquisition with the condition that the recipient must use the equipment or personal property for the grant as long as it is needed for such.

If a milestone under a Fixed Amount Award requires the recipient to procure equipment or personal property, and such requirement is specifically provided in the milestone, then:

- (1) The grant must require that the purchase be in accordance with [22 CFR 228](#), [ADS 310](#), [ADS 312, Eligibility of Commodities](#) and any applicable waivers,
- (2) The “Required, As Applicable” provisions from the [ADS 303mat, Mandatory Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#) applicable to the purchase of the equipment or personal property must be included in the Fixed Amount Award, and
- (3) The grant must include disposition instructions for the equipment or property. For additional guidance, see [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#).

303.3.26 Leader with Associate Awards

Effective Date: 12/23/2019

A Leader with Associate (LWA) Award involves the issuance of a Leader Award that covers a specified worldwide activity. The Leader Award includes language that allows a Mission or other office to make one or more separate awards, called Associate Awards, to the Leader Award recipient without using restricted eligibility. The Associate Award must be within the terms and scope of the program description of the Leader Award and support a distinct local or regional activity.

Leader with Associate Awards must not be confused with Indefinite Delivery Indefinite Quantity (IDIQ) Contracts that are used in acquisition or any of the procedures used under an IDIQ. As examples, a Leader Award cannot be made without a program description and a budget with sufficient funds to carry out the program description in the Leader Award, and Associate Awards are not made using fair opportunity procedures.

a. Justification for Use of a Leader with Associate Instrument

The Selection of Instrument Memo provided by the OU in accordance with [ADS 304](#) must justify the use of an LWA and describe in detail why the proposed LWA is necessary and why a non-LWA grant or cooperative agreement will not achieve the program objectives. The justification in the memo must include one or more of the following:

- The specific, quantifiable, and demonstrable economies of scale or responsive timing to be achieved through use of the LWA,
- Whether any specific, identified needs in non-presence countries can best be addressed through an LWA, and
- How the LWA will achieve the Agency goal of centralizing knowledge or expertise or demonstrating global technical leadership in a specific technical area.

If the LWA has a combined ceiling (Leader and all Associate Awards) of \$75 million or more, the Choice of Instrument Memo's justification must also:

- Specify what specialized technical skills are required to plan and manage the activities that are not available in the field, or
- Demonstrate that an anticipated and frequent need to respond to compelling urgent programmatic requirements cannot be foreseen in terms of location, timing, or magnitude and can best be met through the use of a LWA.

If "buy-ins" (i.e. mission funding into the Leader or centrally managed Associate Awards) will be permitted under the LWA, the Choice of Instrument Memo must propose a ceiling on the size of individual "buy-ins." This ceiling must also be included in the NOFO and the award. The memo must also include an analysis of why buy-ins are more advantageous to the Agency than individual Associate Awards. "Buy-ins" may be justified by a discussion of one or more of the following conditions:

- The highly technical or specialized nature of the program and the lack of field staff with the required expertise to plan or manage such activities, or
- An anticipated frequent need to respond to truly urgent programmatic requirements that cannot be foreseen in terms of location, timing, or magnitude, or
- Needs in non-presence countries

For any proposed individual buy-in ceiling in excess of \$1 million, the Planner must provide compelling justification in the Choice of Instrument Memo documenting why an individual associate award is not appropriate.

b. Competition of Leader Award

The AO must issue a Notice of Funding Opportunity (NOFO) for every Leader with Associate Award following the procedures in **303.3.5.2**. AOs must not award LWAs based on Annual Program Statements, unsolicited applications or with restricted eligibility, unless a deviation is authorized in accordance with the requirements of **303.3.4**. The RFA must state that the competition covers both the initial Leader Award and all subsequent Associate Awards, and specify a ceiling on the total amount of funding for all Associate Awards.

c. Total Amount and Funding

The AO must specify the Total Estimated Amount of the Leader Award and the ceiling on the cumulative total amount of funding for Associate Awards in the NOFO and the Leader Award. These amounts must not be exceeded without a determination to restrict eligibility, in accordance with **303.3.6.5**. Each Associate Award must specify the total award amount for that instrument. Likewise, the NOFO must state that there is no guarantee regarding the number or amount of Associate Awards.

The NOFO and resulting Leader Award must state whether missions will be permitted to provide funding through “buy-ins” to the Leader Award or centrally-managed Associate Awards. If “buy-ins” will be permitted, a ceiling on individual “buy-ins” under the Leader or Associate Awards must be established within the terms of the Leader Award.

Leader and Associate Awards are separately obligated instruments. An obligation under the Leader Award is not transferable to Associate Awards (nor transferable from the Associate Awards to the Leader Award or other Associate Awards) without a deobligation and reobligation of funds in accordance with [ADS 621](#).

d. Pre-Award Requirements for Associate Awards

Once an AO selects a recipient pursuant to an NOFO for a Leader with Associate Award, the eligibility for any Associate Award issued within the terms and conditions of the Leader Award will be limited to the recipient of the Leader Award. The AO’s risk determination of the recipient for the Leader Award applies to Associate Awards. However, before awarding an Associate Award, the AO must verify that the applicant does not:

- Have active exclusions in SAM (www.sam.gov);
- Appear on the Specially Designated Nationals (SDN) and Blocked Persons List maintained by the U.S. Treasury for the Office of Foreign Assets Control, sometimes referred to as the “OFAC List” (online at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>); and

- Appear on the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

The AO for the Associate Award must not require additional documentation concerning the recipient's financial or other management systems, unless there is reason to believe that the recipient does not meet the criteria in **303.3.9**.

The AO must obtain the required certifications (see **303.3.8**) prior to the execution of the Leader Award. Before the AO may award an Associate Award, the recipient must affirm that those certifications remain valid or provide new certifications (see [ADS 303mad, Affirmation of Certifications](#)).

USAID may issue more than one Leader Award for a program under the NOFO if the Bureau determines that it is appropriate. However, USAID must not compete Associate Awards among the different recipients of the Leader Awards.

The AO has the discretion to issue one or more Associate Awards to a Leader Award recipient or to issue more than one Associate Award under different Leader Awards for a program. When a Leader Award recipient works with a consortium or subrecipients, any Associate Awards under the Leader Award must be issued to the Leader Award recipient, not to any of the consortium or subrecipient members. The recipient of the Leader Award may make subawards to the consortium members as necessary for the program. The Leader Award must include a requirement for the recipient to provide a programmatic report, either semi-annually or annually, to the AOR that summarizes activities undertaken, progress made/results achieved, trends, or problems under both the Leader Award and all Associate Awards.

e. Length of Award

The period of performance for a Leader Award must not exceed five years. AOs may extend a Leader Award for up to a cumulative period of ten years for purposes of the Leader Award activities using a determination to restrict eligibility based on **303.3.6.5**. AOs may issue Associate Awards at any time during the period of performance of the Leader Award. The period of performance for an Associate Award must not exceed five years. AOs may extend individual Associate Awards for a cumulative period of up to ten years using a determination to restrict eligibility based on **303.3.6.5**, but not more than five years beyond the expiration of the Leader Award. AOs must not extend a Leader or Associate Award more than five years into the future at any given time.

USAID does not fund activities under the Leader Award after its expiration date.

After completion of the activities under the Leader Award, if funds are available, the AOR may request that the recipient provides a report on lessons learned.

f. Procedures for Issuing an Associate Award

After the AO awards the Leader Award, the AO sends a copy of the award to all Missions, along with any necessary guidance or instructions regarding issuance of Associate Awards. AOs may issue Associate Awards for activities within the programmatic scope of the Leader Award. Leader Awards are also posted on the USAID Business and Acquisition and Assistance Intranet site (<https://pages.usaid.gov/M/OAA/assistance-resources>).

Before requesting the AO to issue an Associate Award, the Planner must consult with the AOR of the Leader Award. The AOR of the Leader Award must concur that the program description for an Associate Award is within the program description and does not extend beyond the scope of the program area, project goal, project purpose, sub-purposes, outputs and overall results framework of the Leader Award. After receiving the AOR's concurrence, either the AO, or the Planner with the AO's consent, may request the Leader Award recipient to provide an application. The request includes a background statement; a brief program description outlining the area of activity; host country involvement; funding; any period limitation; and, description of why the activity falls under the Leader Award. The RFA for an Associate Award must request a response to the program description and an associated budget.

An SF-424 is not required. The Planner must review the application and provide comments to the AO responsible for the Associate Award. The AO issuing the Associate Award must ensure that the Associate Award is within the scope of the Leader Award when reviewing the recipient's proposed costs and negotiating the final award. The AO has the decision authority whether or not to award the Associate Award.

The AO may execute an Associate Award as a grant or a cooperative agreement, independent of whether the Leader Award is a grant or cooperative agreement. If an Associate cooperative agreement is selected, the AO must specify the terms of any substantial involvement in the award. Such substantial involvement must be consistent with the requirements of **303.3.11** and the program description for the particular Associate Award. The AO must use the standard grant or cooperative agreement award format for the Associate Award.

The AO must include appropriate language in the schedule of the Associate Award, requiring the recipient to provide copies of all program and financial reports to the AOR of the Associate Award with copies of all programmatic reports to the AOR of the Leader Award. The schedule of the Associate Award must also specify:

- The Authorized Geographic Code for procurement, if it is different from the Leader Award;
- Any cost sharing requirements; and
- Any additional standard provisions, such as Title to and Care of Property (Cooperating Country), that may not be included in the Leader Award, but are necessary to the Associate Award.

g. Amendments to Associate Awards

Amendments to associate awards may be restricted to the recipient of the Associate Award, only if the amendment does not extend beyond the scope of the program area, project goal, project purpose, sub-purposes, outputs and overall results framework, period of performance, total amount and other terms and conditions of the Leader Award. If the amendment to the associate award extends beyond the areas listed in the preceding sentence then the amendment must comply with the requirements found in ADS 303.3.6.5.

Any proposed buy-in under a Leader or centrally-managed Associate Award must have a detailed description of the work to be done, its timing, and estimated cost/budget. All documentation must be submitted to the AO and the relevant Bureau by July 1 for the buy-in obligation to be completed by the end of the fiscal year.

h. File Documentation

The AO's file documentation for Associate Awards must include

- A copy of the Planner's consultation with the AOR for the Leader Award;
- The request for the recipient's application;
- The recipient's application with affirmation of certifications found in **303.3.8**;
- A Memorandum of Negotiation, including a cost review; and
- A copy of the final Associate Award (a copy must be sent to the AOR for the Leader Award) and a copy of the Leader Award.

303.3.27 Public-Private Partnerships

Effective Date: 12/23/2019

Public-Private Partnerships including Global Development Alliances (GDAs) awards, private sector engagements and other Global Development Lab instruments, provide

resource leverage (see below) from sources outside USAID. Public-Private Partnerships may result in the award of a grant or cooperative agreement. The Planner should consult closely with the Office of Innovation and Development Alliances, Global Partnerships Division (IDEA/PS), the Assistance Executive, the Office of the General Counsel or RLO when developing the program description for these types of awards. Additional guidance may be found at the [GDA Web site](#) (available on the USAID internal website only).

Leveraging represents all of the non-USAID resources (excluding cost sharing) that are expected to be applied to a program. Leveraging is limited to awards that result from Public-Private Partnerships. Leveraging includes resources that third-parties bring to the program without necessarily providing them to the recipient of the USAID assistance award. These parties may include the host government, private foundations, businesses, or individuals. The recipient is not responsible for meeting the leveraging amounts/resources and leveraging is not subject to audit.

Assistance awards that result from Public-Private Partnerships may include cost sharing. If the award includes cost sharing, the recipient must meet the cost-sharing amount and requirements, and the cost-sharing is subject to audit.

For more information regarding leveraging, please refer to the [GDA home page](#) and [USAID Global Partnerships](#) (available on the USAID internal website only).

303.3.28 Participation of Faith-Based and Community Organizations

Effective Date: 12/23/2019

- a. In accordance with [Executive Order 13279, Equal Protection for the Laws for Faith-Based and Community Organizations](#), [Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations](#), and [22 CFR 205, Participation by Religious Organizations in USAID Programs](#), the following principles guide USAID on the participation of faith-based and community organizations in USAID-funded programs:
 - (1) The Federal Government must distribute Federal financial assistance for social service programs in the most effective and efficient manner possible (see [Executive Order 13559](#)).
 - (2) All eligible organizations, including faith-based and other community organizations, must be able to apply on an equal footing for Federal financial assistance used to support social service programs and participate in any program for which they are eligible.
 - (a) USAID, recipients, and subrecipients who administer USAID funded programs, must not discriminate for or against an organization on

the basis of the organization's religious character or affiliation [see [22 CFR 205.1\(a\)](#)]. USAID must not disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services (see [22 CFR 205.1\(f\)](#)). Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization, or lack thereof (see [22 CFR 205.1\(i\)](#)). Additionally, when limiting eligibility using the local eligibility exception (**303.3.6.5**), USAID must not limit eligibility solely to either faith-based or secular organizations.

- (b) All organizations, whether religious or secular, that participate in USAID programs, including through an award or subaward, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, prayer, or proselytization (see [22 CFR 205.1\(f\)](#)).
- (c) Faith-based organizations must not be required, as a condition of Federal assistance, to sacrifice their independence, autonomy, expression, or religious character. A faith-based organization that applies for or participates in USAID-funded programs or services, including through an award or subaward, may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support or engage in any explicitly religious activities. Among other things, faith-based organizations may use their facilities to provide social services supported by USAID, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization may retain authority over its internal governance and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its mission statements and other chartering or governing documents (see [22 CFR 205.1\(c\)](#)).
- (d) Organizations that receive direct financial assistance under any USAID program, including through an award or subaward, may not engage in explicitly religious activities as part of the programs or

services funded by USAID. Explicitly religious activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance [see [22 CFR 205.1\(b\)](#)].

- (e) USAID funds may not be used for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law [see [22 CFR 205.1\(d\)](#)].
- (f) An organization that participates in programs funded by financial assistance from USAID, including through an award or subaward, must not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice [see [22 CFR 205.1\(e\)](#)].
- (g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from USAID [see [22 CFR 205.1\(g\)](#)].
- (h) Solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation [see [22 CFR 205.1\(h\)](#)]. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so using any of the following:
 - Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;
 - A statement from a state taxing body or the state secretary of state certifying that the organization is a nonprofit organization operating within the state; and no part of its net earnings lawfully benefit any private shareholder or individual;
 - A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

- Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate.
- b. The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States [see [22 CFR 205.1\(i\)](#)].

c. Clarification Regarding Proper Implementation and Use of Data

[Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations](#) and [22 CFR 205, Participation by Religious Organizations in USAID Programs](#), call for equal opportunity for faith-based organizations. They do not provide for set-asides or evaluation preferences for faith-based organizations, and data collected is not to be used for purposes of funding decisions. The AO must not:

- Provide for set-asides, reservations, or evaluation preferences for faith based organizations in NOFOs.
 - Include participation of faith-based organizations as a specific evaluation factor or requirement for award. It may, however, be referred to as an example of one of the many types of organizations whose participation could potentially enhance the quality and impact of development assistance programs.
- d. AOs must ensure that the Mandatory Standard Provision, “Equal Participation by Faith-Based Organizations (June 2016),” is included in all solicitations and awards (see **303.4.2**).

303.3.29 Suspension and Debarment

Effective Date: 12/23/2019

In accordance with [2 CFR 780](#) and [2 CFR 180](#), the Suspending and Debarring Official (SDO) may suspend or debar individuals and entities from participating in government-funded grants, cooperative agreements and other assistance programs when such action is in the public interest.

- a. M/MPBP/Compliance, in consultation with GC/LE provides direct support and recommendations to the SDO in all matters relating to recipient disclosures, suspension, and debarment.

- b. AOs must notify M/MPBP/Compliance in writing at **compliance@usaid.gov** when they become aware of any of the causes of suspension or debarment, with regard to recipients and subrecipients, as specified in **2 CFR 780** and **2 CFR 180**.
- c. Upon receiving notification from the AO that a recipient may have engaged in actions that could lead to suspension or debarment, M/MPBP/Compliance, in consultation with GC/LE will:
 - Consult with other offices within USAID as required to prepare a recommendation for the SDO; and
 - Coordinate suspension or debarment actions with the Interagency Suspension and Debarment Committee (ISDC) and/or the Office of Inspector General.
- d. When, in accordance with **2 CFR 780** and **2 CFR 180**, the SDO decides to initiate a suspension and /or debarment action, M/MPBP/Compliance, in consultation with GC/LE, will:
 - Issue a written notice of suspension or proposed debarment action to the recipient and any affiliates involved; and
 - Enter the recipient's exclusion information into the System for Award Management (SAM) at www.sam.gov.

303.3.30 Limitation on Construction under Assistance

Effective Date: 08/16/2013

The Agency's infrastructure projects are increasingly a critical component of development programs. However, the limited management oversight the Agency can legally assert over recipients under assistance awards minimizes the Agency's ability to ensure that the design and construction activities are carried out properly. As such, Operating Units and AOs must adhere to the Administrator-approved policy and procedures that limit the use of assistance awards to accomplish construction activities ([ADS 303maw, USAID Implementation of Construction Activities](#)).

Provision Limiting Construction Activities in Awards

AOs must include the Mandatory Standard Provision, "Limiting Construction Activities (August 2013)" in all solicitations and awards. If the assistance award permits construction activities based on the policy above (or as authorized by waiver), the AO must insert the description and location(s) of the specific construction activities under section **(d)** of the provision. If the award does not include construction activities, the AO must insert "Construction is not eligible for reimbursement under this award" in section **(d)** of the provision.

303.3.31 USAID Implementing Partner Notices (IPN) Portal for Assistance

Effective Date: 07/21/2014

- a. The USAID Implementing Partner Notices Portal for Assistance (also referred to as “IPN Portal”) streamlines USAID’s process of providing universal bilateral amendments for awards to recipients for their signature. The IPN Portal is also available to provide notices to USAID recipients who register with the IPN Portal. The IPN Portal posts proposed universal bilateral amendments for USAID awards, which can be accessed electronically by registered partners AOs and A&A specialists. The IPN Portal for Assistance is located at <https://sites.google.com/site/usaidipnforassistance/>.
- b. When necessary, the IPN Portal Administrator, as designated by the Director, M/OAA, will generate bilateral award amendments and notices, and post the amendments/notices to the IPN Portal. Examples of such amendments include required ADS 303 provision updates affecting all awards (or classes of awards to be specified in the amendment). The Portal Administrator will provide advance notice to AOs that an update is being prepared for posting in the IPN Portal.

This policy applies to all awards except:

- Associate Awards under LWAs,
- Awards to PIOs and bilateral development partners, and
- Interagency agreements.

IPN Portal amendments must not change the:

- Amount of obligated funds,
 - Total estimated award amount,
 - Program Description, or
 - Period of performance.
- c. Proposed bilateral amendments provided through the IPN Portal are not effective until the Recipient and the AO sign the amendment. Additional policy guidance and specific instructions for registering with the IPN Portal can be found in [ADS 303max, USAID Implementing Partner Notices \(IPN\) Portal](#). AOs and A&A specialists are responsible for registering with the IPN Portal, processing the IPN Portal amendments under their respective awards, and completing GLAAS requirements in accordance with this policy.

- d. AOs must insert the applicable provision “**USAID Implementing Partner Notices (IPN) Portal for Assistance (July 2014)**” from [ADS 303maa, Standard Provisions for U.S. Nongovernmental Recipients](#) or [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#), and [ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#) in all solicitations and resulting awards.

303.3.32 Trafficking in Persons (TIP)

Effective Date: 12/23/2019

a. Requirements

The mandatory standard provision on trafficking in persons is included in [ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations](#), [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#), and [ADS 303mat, Standard Provisions for Fixed Amount Awards to NGOs](#). The provision ensures USAID compliance with various legislative requirements intended to ensure that U.S. Government acquisition and assistance actions are not tainted by trafficking in persons, such as the Trafficking Victims Protection Act of 2000 and Section 1704(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013). The provision reflects the U.S. Government’s policy against human trafficking and lists specific trafficking in persons-related prohibitions and requirements that are mandatory for both U.S. and non-U.S. recipients.

b. Certification Requirement and Compliance Plan

If the estimated value of services required to be performed under the award outside of the United States exceeds \$500,000, additional trafficking-related requirements apply to the solicitation and award. Specifically, the Agreement Officer (AO) must require the applicant/recipient to certify that it has implemented a compliance plan to prevent trafficking.

1. The AO must require the apparently successful applicant to submit the certification “Certification Regarding to the Trafficking in Persons” before the award is made. The certification is included in [ADS 303mav, Certifications, Assurances, Representations and Other Statements of the Recipient](#).
2. The mandatory standard provision on trafficking in persons further requires the recipient to submit the certification annually during the award’s period of performance.

3. Unless specifically requested by the AO, the recipient is not required to submit to the AO, the trafficking compliance plan required in the TIP standard provision.

c. Violations and Remedies

If an AO receives credible information from any source that the recipient, subrecipient, contractor; or any agent of the recipient, subrecipient, or contractor, is engaged in prohibited activities related to trafficking in persons (as defined by the mandatory standard provision on trafficking in persons), the AO must immediately notify both the Office of the Inspector General (OIG) and the Suspending and Debaring Official (SDO). The AO must also consult with the Labor Compliance Advisor at lca@usaid.gov. The AO may also direct the recipient to take specific steps to abate an alleged violation or enforce the requirements of the recipient's compliance plan. If necessary, the OIG will conduct an investigation of the alleged offense.

Upon receipt of an IG report that provides support for the allegations, M/OAA will identify an agency official who will be responsible for expeditiously conducting an administrative proceeding, allowing the recipient an opportunity to respond to the report. After the proceeding, the authorized agency official will make a final determination as to whether the allegations are substantiated and will notify the AO and the Director, M/OAA. The AO, in consultation with the Director, M/OAA, will consider taking one or more of the following remedial actions:

1. Requiring the recipient to remove an employee from the performance of work under the award;
2. Requiring the recipient to terminate a contract or a subaward;
3. Suspending payments under the award until such a time as the recipient of the award has taken appropriate remedial action;
4. Terminating the award, in accordance with 2 CFR 200 and 2 CFR 700 for U.S. Organizations, or the Award Termination and Suspension Standard Provision for Non-U.S. Organizations; and/or
5. Referring the matter to the SDO.

The AO and the Director, M/OAA may consider whether the recipient had a compliance plan in place, and whether the recipient was in compliance with that plan at the time of the violation, as a mitigating factor in determining which remedies, if any, should apply. The AO and Director, M/OAA may consider the failure of the recipient to stop an alleged violation or enforce the requirements of

the compliance plan when directed by the AO as an aggravating factor in determining which remedies, if any, should apply.

Whether or not the official authorized to conduct the administrative proceeding is the Suspending and Debarring Official, the Suspending and Debarring Official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures to suspend, propose for debarment, or debar the recipient, if appropriate, considering the factors above.

AOs must enter all substantiated allegations of trafficking in persons-related violations into the Federal Awardee Performance and Integrity Information System (FAPIIS). Immediately upon entering the information into FAPIIS, the AO must also transmit copies of all relevant documents to the Office of Management Policy, Budget, and Performance, Compliance Division at **compliance@usaid.gov**, including a brief explanation of the actions taken and the date the information was posted in FAPIIS.

303.3.33 Prevention of Sexual Exploitation and Abuse

Effective Date: 06/07/2018

The mandatory standard provisions “Regulations Governing Employees” in [ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations](#) and “Recipient and Employee Conduct” in [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#), require that recipients meet internal control requirements and have a code of conduct for their employees that is consistent with the standards for UN employees in Section 3 of the United Nations Secretary-General’s Bulletin - Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13). This requirement flows down to all subawards. As part of these requirements, the recipient is required to report employee misconduct to the Agreement Officer and the Mission Director. If the Agreement Officer is informed of such misconduct, the AO must immediately report the case to the OIG at:

Online: <https://oig.usaid.gov/content/oig-hotline>

Email: ig.hotline@usaid.gov

Mail: U.S. Agency for International Development
Office of Inspector General
P.O. Box 657
Washington, DC 20044-0657

Telephone: 1-800-230-6539 or 202-712-1023

Fax: 202-216-3801

303.3.34 Abortion Restrictions

Effective Date: 05/29/2020

USAID assistance awards are subject to statutory and policy abortion restrictions. To implement these restrictions, AOs must include the mandatory standard provision “Voluntary Population Planning Activities – Mandatory Requirements” in all assistance awards.

In addition to the restrictions that apply to all U.S. foreign assistance awards, certain restrictions apply only to U.S. global health assistance. The [Protecting Life in Global Health Assistance \(PLGHA\)](#) policy requires a non-U.S. NGO to agree, as a condition of receiving U.S. global health assistance, that the organization will not perform or actively promote abortion as a method of family planning or provide financial support to any other non-U.S. NGO that conducts such activities. The policy does not apply to U.S. organizations; however, U.S. organizations are required to flow down the provision to non-U.S. NGO sub-recipients that receive global health assistance. The PLGHA policy is implemented in the required, as applicable, standard provision “Protecting Life in Global Health Assistance.” AOs must include this standard provision in all assistance awards receiving funding for global health assistance, as outlined in the applicability statement to the standard provision.

The standard provisions referenced in this section are located in [ADS 303maa](#), [ADS 303mab](#), and [ADS 303mat](#).

For more information on these statutory and policy restrictions, please see: <https://www.usaid.gov/global-health/legislative-policy-requirements>.

303.3.35 Information Technology and Telecommunication**303.3.35.1 Information Technology Under Assistance Awards**

Effective Date: 08/18/2020

Agency staff must not procure IT and IT services for Agency use through an assistance award (see [ADS 509, Management and Oversight of Agency Information Technology Resources](#)). In accordance with the FGCAA and [ADS 304](#), grants and cooperative agreements transfer a thing of value to the recipient to carry out a public purpose, unlike contracts, which are for the direct benefit or use of the Agency.

Activity Planners must not include IT and IT services for the Agency’s use or direct benefit in the program description for an assistance award. There are no exceptions, waivers, or deviations to this statutory prohibition. Additionally, AOs must ensure that the notice of funding opportunity and the resulting awards do not include IT and IT services for the Agency’s use or direct benefit.

When IT and IT services for Agency use are being obtained a contract must be used and Planners must consult [ADS 302](#) and [ADS 509](#) for requirements, including mandatory requirements for M/CIO approval.

303.3.35.2 Covered Telecommunication and Video Surveillance Equipment or Services

Effective Date: 08/18/2020

Effective August 13, 2020, a recipient may not procure covered telecommunication equipment or services for the implementation of their program using award funds.

2 CFR 200.216, applicable to US organizations, and the standard provision “Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment” applicable to non-US NGOs, implement Section 889(b) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 ([Pub. L. 115-232](#)) that prohibits the use of award funds, including direct and indirect costs, cost share and program income, to procure covered telecommunication and video surveillance services or equipment. The statute covers certain telecommunications equipment and services produced or provided by Huawei Technologies Company or ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Such covered telecommunication equipment or services must not be reimbursed to the recipient as a direct or indirect cost or accepted as part of cost share. Additionally, the recipient must not use any program income generated under the award to purchase covered telecommunication equipment or services.

303.4 MANDATORY REFERENCES

303.4.1 External Mandatory References

Effective Date: 12/23/2019

- a. [2 CFR 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension \(Nonprocurement\)](#)
- b. [2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards](#)
- c. [2 CFR 700, USAID Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- d. [2 CFR 780, Non Procurement Debarment and Suspension](#)
- e. [5 CFR 1320, Controlling Paperwork Burdens on the Public](#)

- f. [22 CFR 203, Registration of Private Voluntary Organizations \(PVOs\)](#)
- g. [22 CFR 205, Participation by Religious Organizations in USAID Programs](#)
- h. [22 CFR 216, Environmental Procedures](#)
- i. [22 CFR 227, New Restrictions on Lobbying](#)
- j. [22 CFR 228, Procurement of Commodities and Services Financed by USAID Federal Program Funds](#)
- k. [31 USC 6301- 6308, Federal Grant and Cooperative Agreement Act](#)
- l. [System for Award Management](#)
- m. [Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations](#)
- n. [Executive Order 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives.](#)
- o. [Executive Order 13317, Volunteers for Prosperity](#)
- p. [Foreign Assistance Act of 1961, as amended](#)
- q. [OMB Final Guidance “Implementation of Federal Grant and Cooperative Agreement Act of 1977” \(43 FR 36860, August 18, 1978\)](#)
- r. [Paperwork Reduction Act](#)
- s. [Specially Designated Nationals \(SDN\) and Blocked Persons List](#)

303.4.2 Internal Mandatory References

Effective Date: 08/18/2020

- a. [Acquisition and Assistance Policy Bulletins \(AAPDs\)/Contract Information Bulletins \(CIBs\)](#)
- b. [ADS 103, Delegations of Authority](#)
- c. [ADS 201, Program Cycle Operational Policy](#)
- d. [ADS 204, Environmental Procedures](#)

- e. [ADS 206, Prohibition of Assistance to Drug Traffickers](#)
- f. [ADS 260, Geographic Codes](#)
- g. [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#)
- h. [ADS 300mat, Guidance for Broad Agency Announcements](#)
- i. [ADS 302man, USAID Guidance on Congressional Award Notice System](#)
- j. [ADS 302mbo, Guidance for Use of the Authorities under the Expedited Procedures Packages \(EPPs\)](#)
- k. [ADS 303maa, Standard Provisions for U.S. Nongovernmental Organizations](#)
- l. [ADS 303mab, Standard Provisions for Non-U.S. Nongovernmental Organizations](#)
- m. [ADS 303mad, Affirmation of Certifications](#)
- n. [ADS 303mae, USAID Policy Guidance on Posting Grant Opportunities and Application Packages on Grants.Gov](#)
- o. [ADS 303mai, Model Letters and Procedures for Designating the Agreement Officer's Representative \(AOR\) for Cooperative Agreements and Grants](#)
- p. [ADS 303mak, Fixed Amount Award Entity Eligibility Checklist](#)
- q. [ADS 303mat, Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations](#)
- r. [ADS 303mav, Certifications, Assurances, Representations and Other Statements of the Recipient](#)
- s. [ADS 303maw, USAID Implementation of Construction Activities](#)
- t. [ADS 303max, USAID Implementing Partner Notices \(IPN\) Portal](#)
- u. [ADS 303maz, USAID Policy Guidance on Exemptions to Assistance Reporting Under the Federal Funding Accountability and Transparency Act of 2006 \(FFATA\)](#)
- v. [ADS 303mba, Pre-Award Terms](#)
- w. [ADS 304, Choice of Implementation Instrument](#)

- x. [ADS 312, Eligibility of Commodities](#)
- y. [ADS 318, Intellectual Property Rights](#)
- z. [ADS 320, Branding and Marking](#)
- aa. [ADS 350maa, Guidance on Funding Foreign Government Delegations to International Conferences](#)
- ab. [ADS 458, Training and Career/Professional Development](#)
- ac. [ADS 511, Essential Records Program](#)
- ad. [ADS 540, USAID Development Experience Information and Reference Services](#)
- ae. [ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities](#)
- af. [ADS 625, Administrative Accounts Receivable](#)
- ag. [A.I.D. Partnership in International Development with Private and Voluntary Organizations \(Policy Paper\)](#)
- ah. [Guide to USAID's Assistance Application Process and to Submitting Unsolicited Assistance Applications](#)
- ai. Procurement and Assistance Procedures for the HIV/AIDS and Infectious Disease Initiatives (available on the USAID internal website only)
- aj. [Simplified Grant Format](#)

303.4.3 Mandatory Forms
Effective Date: 02/15/2012

- a. [SF-270, Request for Advance or Reimbursement](#)
- b. [SF-271, Outlay Report and Request for Reimbursement for Construction Programs](#)
- c. [SF-424, Application for Federal Assistance](#)
- d. [SF-424a, Budget Information, Non-Construction Programs](#)

- e. [SF-425, Federal Financial Report](#)
- f. [SF-425a, Federal Financial Report Attachment](#)

303.5 ADDITIONAL HELP

Effective Date: 07/22/2015

- a. [ADS 302sat, Guidance on Closeout Procedures for A&A Awards](#)
- b. [ADS 303sac, Sample Action Memorandum for Deviation](#)
- c. [ADS 303sae, Operational Security – General Information](#)
- d. [ADS 303sai, Profit Under USAID Assistance Instruments](#)
- e. [ADS 303saj, Fixed Amount Awards to Non-Governmental Organizations](#)
- f. [ADS 303sal, Fixed Amount Award Template](#)
- g. [ADS 303sam, Non-U.S. Organization Pre-Award Survey Guidelines and Support](#)
- h. [ADS 303san, Agreement Officer's Role in Debt Collection](#)
- i. [Cross Reference Index](#)
- j. [Policy Paper, Women in Development](#)
- k. [Procurement Executive Bulletins \(PEBs\)](#) *(Only available to USAID employees.)*
- l. [Procurement Reform Documentation Requirements for Non-Profit Recipients \(self-certification\)](#)

303.6 DEFINITIONS

Effective Date: 05/18/2020

Agreement Officer (see also Contracting Officer)

A person with the authority to (1) enter into, administer, terminate, and close out assistance agreements, and (2) make related determinations and findings on behalf of USAID. An Agreement Officer may only act within the scope of a duly authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer. (**Chapter 303** and [304](#))

assistance

Financial support to accomplish a public purpose, including grants, cooperative agreements and other agreements in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance, the provision of services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; or, contracts which are required to be entered into and administered under procurement laws and regulations. (**Chapter 303** and [304](#))

Assistance Executive

The Director, Office of Acquisition and Assistance (M/OAA/OD), or designee in USAID/W who

- Acts as the Agency's coordinator for all assistance matters (that is, financial assistance that provides support to a non-governmental entity to accomplish a public purpose), which may require OMB approval (such as deviations to OMB regulations);
- Makes the final determination of the choice of implementation instrument when there is disagreement between the contracting activity and the Development Objective team. (**Chapter 303** and [304](#))

award

A form of implementing mechanism through which USAID transfers funds to an implementing partner, generally selected through a competitive process resulting in a contract, grant, or cooperative agreement. (**Chapter [201](#) and 303**)

leverage

Significant resources mobilized from non-U.S. Government sources. USAID seeks the mobilization of resources of other actors on a 1:2 or greater basis (i.e., 50 percent of the proposed value of the award). Leveraged resources may include grants/awards from non-U.S. Government organizations and other donor governments. (**Chapters [201](#), 303, [623](#)**)

Local Entity

Section 7077 of Public Law 112-74, the Consolidated Appropriations Act, 2012 (P.L. 112-74), as amended by Section 7028 of the Consolidated Appropriations Act, 2014 (P.L. 113-76), is titled "Local Competition Authority" and provides as follows: "Section 7077.

(a) Local Competition - Notwithstanding any other provision of law, the USAID Administrator may, with funds made available in this and prior Acts, award contracts and other acquisition instruments in which competition is limited to local entities if doing so would result in cost savings, develop local capacity, or enable the USAID

Administrator to initiate a program or activity in appreciably less time than if competition were not so limited.

Provided, That the authority provided in this section may not be used to make awards in excess of \$5,000,000 and shall not exceed more than 10% of the funds made available to USAID under the Act for assistance programs.

Provided further, That such authority shall be available to support a pilot program with such funds:

Provided further, That the USAID Administrator shall consult with the Committees on Appropriations and relevant congressional committees on the results of such pilot program.

(b) For the purposes of this section, local entity means an individual, a corporation, a nonprofit organization, or another body of persons that—

(1) is legally organized under the laws of; (2) has as its principal place of business or operations in;

(3) is majority owned by individuals who are citizens or lawful permanent residents of; and

(4) managed by a governing body the majority of who are citizens or lawful permanent residents of; a country receiving assistance from funds appropriated under title III of this Act.

(c) For purposes of this section, “majority-owned” and “-managed by” include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.”

locally established partner (LEP)

A U.S. or international organization that works through locally-led operations and programming models. LEPs:

- Have maintained continuous operations in-country for at least five years and materially demonstrate a long-term presence in a country through adherence or alignment to the following:
 - Local staff should comprise at least 50% of office personnel,
 - Maintenance of a dedicated local office,
 - Registration with the appropriate local authorities,

- A local bank account, and
- A portfolio of locally-implemented programs.
- Have demonstrated links to the local community, including:
 - If the organization has a governing body or board of directors, then it must include a majority of local citizens;
 - A letter of support from a local organization to attest to its work; and
 - Other criteria that an organization proposes to demonstrate its local roots.

(Chapters [201](#) and [303](#))

Non-U.S. Organization

A foreign organization as defined in **2 CFR 200.47. (Chapter 303)**

Planner

The designated person responsible for developing and maintaining a written Individual Acquisition Plan (IAP), or for the planning function in those acquisitions (FAR 7.101) or assistance actions not requiring a written plan. The Planner may be the Project Design Team Leader or Project Manager, or his or her designee (ADS 201), such as the intended Contracting Officer/Agreement Officer Representative (COR/AOR), who will work with the CO/AO in carrying out the planning function. Operating Units (OUs) must ensure that a Planner is identified for a particular procurement. Though OUs have the discretion to determine the appropriate individual based on the organizational structure and functions of the unit, the Planner must be an individual with sufficient authority in the OU to ensure that planning complies with this chapter, FAR acquisition planning requirements, and OMB/OFPP Policy Letter 11-01 Performance of Inherently Governmental and Critical Functions. (**Chapters [300](#), [302](#), [303](#)**)

recipient

An organization that receives direct financial assistance (a grant or cooperative agreement) to carry out an assistance program on behalf of USAID, in accordance with the terms and conditions of the award and all applicable laws and regulations. (**Chapters [303](#), [304](#), [305](#), [591](#)**)

transition award

An assistance award to a local entity that has been a sub-recipient under a USAID prime award (the “initial award”) and all of the following conditions have been met:

- The direct award does not exceed 5 years in duration and the total estimated amount is less than \$5 million (\$20 million for CPCs);
- The subrecipient is a local organization;
- USAID’s intent that the initial award recipient would develop the capacity of the sub-recipients so that the sub-recipients would be eligible to receive a direct

award from USAID or other donors in the future is clearly stated in the funding opportunity for the initial assistance; and

- The initial award contains: (1) Explicit criteria for the prime recipient to identify and qualify a subrecipient for a direct award, (2) Procedures for making the direct award, (3) and A timeframe for when the direct award will be considered, including the limits of USAID funding of the initial award for activities of the sub-recipient. (**Chapter 303**)

underutilized partner

An organization that has received less than \$25 million in direct or indirect awards from USAID over the past five years. (**Chapter 303**)

303_081820



USAID
FROM THE AMERICAN PEOPLE

Standard Provisions for Non-U.S. Nongovernmental Organizations

A Mandatory Reference for ADS Chapter 303

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Standard Provisions for Non-U.S. Nongovernmental Organizations

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MANDATORY STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL ORGANIZATIONS

M1. ALLOWABLE COSTS (DECEMBER 2104)

- a. The recipient will be reimbursed for costs incurred in carrying out the purposes of this award in accordance with the terms of this award and the applicable cost principles in effect on the date of this award. The recipient may obtain a copy of the applicable cost principles from the Agreement Officer (AO):

2 CFR 200, Subpart E, Cost Principles

48 CFR 31.2 Federal Acquisition Regulations (FAR) and 48 CFR 731.2 USAID Acquisition Regulations (AIDAR) - **Cost Principles for Commercial Organizations**

- b. It is the recipient's responsibility to ensure that costs incurred are in accordance with the applicable cost principles, meaning the costs are (1) reasonable: costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business; (2) allocable: incurred specifically for this award; and (3) allowable: conform to any limitations in this award. The recipient must obtain any prior written approvals from the AO that are required by the applicable cost principles. The recipient may obtain the AO's written determination on whether specific costs not clearly addressed in the applicable cost principles are allowable or allocable. The AO reserves the right to make a final determination on the allowability of costs.
- c. USAID will not pay any profit or fee to the recipient or subrecipients of a grant or cooperative agreement. This restriction does not apply to procurements under this award made in accordance with Standard Provision, "Procurement Policies."
- d. The recipient must retain documentation to support charges to this award for a period of three years from the date of submission of the final expenditure report in accordance with the Standard Provision, "Accounting, Audit, and Records."
- e. This provision must be incorporated into all subawards and contracts, which are paid on a cost reimbursement basis.

[END OF PROVISION]

M2. ACCOUNTING, AUDIT, AND RECORDS (OCTOBER 2017)

- a. Records and Accounting. The recipient must maintain financial records, supporting documents, statistical records and all other records, to support performance of, and charges to, this award. Such records must comply with

accounting principles generally accepted in the U.S., the cooperating country, or by the International Accounting Standards Board (a subsidiary of the International Financial Reporting Standards Foundation). Accounting records and supporting documentation must, at a minimum, be adequate to show all costs incurred under this award; receipt and use of goods and services acquired under this award; the costs of the program supplied from other sources; and the overall progress of the program. Unless otherwise notified by USAID, the recipient records and subrecipient records that pertain to this award must be retained for a period of three years from the date of submission of the final expenditure report.

b. Audits.

- (1) The recipient must have an annual audit, consistent with 2 CFR Part 200, Subpart F, for any recipient fiscal year in which the recipient expends a combined total of \$750,000 or more in all USAID awards, either directly or through another USAID contractor or recipient, excluding fixed price contracts and fixed amount awards.
 - (i) The audit report must be submitted to USAID within 30 days after receipt of the auditor's report, but no later than nine months after the end of the period audited.
 - (ii) The USAID Inspector General will review this report to determine whether it complies with the audit requirements of this award. USAID will only pay for the cost of audits conducted in accordance with the terms of this award.
 - (iii) In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this provision, USAID will consider appropriate sanctions which may include suspension of all, or a percentage of, disbursements until the audit is satisfactorily completed.
- (2) The recipient is not required to have an annual audit for any recipient fiscal year in which the recipient expends a combined total of less than \$750,000 in all USAID awards, either directly or through a prime contractor or recipient, excluding fixed price contracts and fixed amount awards. However, the recipient must make records pertaining to this award for that fiscal year available for review by USAID officials or their designees upon request.
- (3) USAID retains the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending USAID funds, regardless of the audit requirement.

c. Subawards and Contracts.

- (1) If the recipient provides USAID resources to other organizations to carry out the USAID-financed program and activities, the recipient is responsible for monitoring such subrecipients or contractors. The costs for subrecipient audits for organizations that meet the threshold in paragraph b. are allowable. The costs for subrecipient audits for organizations that do not meet the threshold in paragraph b. are allowable only for the following types of compliance audits: activities allowed or unallowed; allowable costs/cost principles; eligibility; cost share; level of effort; earmarking; and reporting.
- (2) This provision must be incorporated in its entirety into all subawards and contracts with non-U.S. organizations that are for more than \$10,000. Subawards of grants and cooperative agreements made to U.S. organizations must state that the U.S. organization is subject to the audit requirements contained in 2 CFR 200, subpart F.

[END OF PROVISION]

M3. AMENDMENT OF AWARD AND REVISION OF BUDGET (AUGUST 2013)

- a. This award may only be amended in writing, by formal amendment or letter, signed by the Agreement Officer (AO), and in the case of a bilateral amendment, by the AO and an authorized official of the recipient.
- b. In addition to other approvals required in this award, the recipient must receive prior written approval from the AO to:
 - (1) Change the scope or the objectives of the program, and/or revise the total award amount or the period of the award (amendment required);
 - (2) Receive an additional obligation of USAID funds in excess of the amount currently obligated (amendment required);
 - (3) Change key personnel, if specified in the award;
 - (4) Permit the absence of more than three months from, or a 25 percent reduction in time devoted to, the award by the principal project leader approved for the award;
 - (5) Transfer funds from the indirect cost line item to absorb increases in direct costs, or vice versa;

- (6) Obtain reimbursement for costs that require prior approval in accordance with the Standard Provision, "Allowable Costs";
 - (7) Transfer funds allotted for training allowances (direct payment to trainees) to other cost categories;
 - (8) Transfer funds allotted for construction activities (as defined in the Mandatory Provision entitled, "Limiting Construction Activities") to other cost categories, or vice versa;
 - (9) Subaward or contract any work under this award, if such subawards or contracts were not described in this award and funded in the approved budget. This does not apply to the purchase of supplies, material, equipment, or general support services; or
 - (10) If specified in this award, transfer funds among direct cost categories, or programs, functions, and activities listed in the award budget, when the cumulative amount of such transfers exceeds or is expected to exceed 10% of the total award amount, as last approved by the AO.
- c. Failure by the recipient to obtain the approvals required above, or elsewhere in this award, may result in the AO disallowing such costs. USAID is under no obligation to reimburse the recipient for costs incurred in excess of the total amount obligated under this award. If the total obligated amount under this award has been increased, the AO will notify the recipient of the increase and specify the new total obligated amount by written amendment to the award.

[END OF PROVISION]

M4. NOTICES (JUNE 2012)

Any notice given by USAID or the recipient is sufficient only if in writing and delivered in person, mailed or e-mailed as follows:

- (1) To the USAID Agreement Officer, at the address specified in this award;
or
- (2) To the recipient, at the recipient's address shown in this award, or to such other address specified in this award.

[END OF PROVISION]

M5. PROCUREMENT POLICIES (JUNE 2012)

The recipient must use its own procurement policies and procedures for the procurement of commodities and services necessary for this award, provided they conform to the requirements listed below and the Standard Provision, “USAID Eligibility Rules for Procurement of Commodities and Services.” A procurement is not a subaward, which is an award of financial assistance to carry out the purposes of the program in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. If subawards are authorized under this award, then the recipient must comply with the Standard Provision “Subawards.”

- a. **Procurement Policies and Procedures.** The recipient must maintain and conduct all of its procurements according to written policies and procedures for the award and administration of contracts, and ensure that the price is fair and reasonable for all procurements. The recipient may designate a reasonable micro-purchase threshold (e.g., \$2,500) under which more simplified acquisition procedures may apply. The recipient’s procurement procedures must provide, at a minimum:
 - (1) Procurements above the recipient’s micro-purchase threshold must be conducted in a manner to provide fair and unbiased competition, including the following:
 - (i) All responsible sources are permitted to compete in an equal manner.
 - (ii) Purchase requests must clearly establish all requirements that the bidder or offeror must fulfill in order to be evaluated by the recipient.
 - (iii) Contracts must be made to the offeror whose offer is responsive to the purchase request and has the most advantageous price, quality, and other factors.
 - (iv) The recipient is encouraged to use U.S. small businesses whenever practicable.
 - (2) Where appropriate, the recipient must determine the most economical and practical means by which to accomplish program objectives, including the necessity of the commodities or services, lease or purchase options, and reasonableness of costs.
 - (3) The recipient must maintain a system for contract administration to ensure that goods and services are provided in accordance with the terms, conditions, and specifications of the contract, including full and timely delivery and performance.
 - (4) **Conflicts of Interest.** The recipient must avoid conflicts of interest, including bias and unfair competitive advantage. The recipient’s standards of conduct must provide for disciplinary actions for violations of such standards by officers, employees, or agents of the recipient.

- (i) Bias. The recipient must ensure that competitions are not biased in favor of one offeror over another. For instance, the recipient, an employee, officer or agent of the recipient, or any member of an employee's immediate family must not receive an award, or have a financial or other interest in the individual or firm selected for an award. The officers, employees, and agents of the recipient must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subawards. In addition, a contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, and/or requests for proposals must be excluded from competing for such procurements.
 - (ii) Unfair Competitive Advantage. The recipient must ensure that no potential contractor has unequal access to information that may provide that contractor an unfair competitive advantage. For instance, a potential contractor who has received procurement sensitive information, such as others' offered prices that are not available to all competitors must be excluded from the competition.
- (5) The recipient must retain all procurement records related to this award in accordance with the Standard Provision, "Accounting, Audit and Records," and make such records available to USAID upon request. In addition, for awards above the recipient's micro-purchase threshold, the recipient must also retain the following written documentation:
 - (i) Basis for contractor selection;
 - (ii) Justification for lack of competition when competitive bids or offers are not obtained; and
 - (iii) Basis for award cost or price.
- (6) The type of procurement instruments used (for example, fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts) must be appropriate for the particular procurement and for promoting the best interest of the program or project. The recipient must not use a "cost-plus-a-percentage-of-cost," "percentage of construction cost," or any other method that provides for a fee payable as a percentage of costs incurred, because such arrangements encourage the contractor to increase costs to increase its fee.
- b. For contracts under this award, the recipient must include all provisions required by this award to be included in contracts, any other provisions necessary to define a sound and complete contract, and the following provisions:
 - (1) Contracts in excess of the recipient's micro-purchase threshold must contain provisions that allow for administrative, contractual, or legal remedies if a contractor violates the contract terms; and

- (2) In all contracts for construction or facility improvement awarded for more than \$100,000, the recipient must observe generally accepted bonding requirements.

[END OF PROVISION]

M6. USAID ELIGIBILITY RULES FOR PROCUREMENT OF COMMODITIES AND SERVICES (MAY 2020)

- a. This provision is not applicable to commodities or services that the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under this award.
- b. Ineligible and Restricted Commodities and Services:
 - (1) Ineligible Commodities and Services. The recipient must not, under any circumstances, procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.
 - (2) Ineligible Suppliers. Any firms or individuals that do not comply with the requirements in Standard Provision “Debarment and Suspension” and Standard Provision “Preventing Transactions with, or the Provision of Resources or Support to, Sanctioned Groups and Individuals” must not be used to provide any commodities or services funded under this award.
 - (3) Restricted Commodities. The recipient must obtain prior written approval of the Agreement Officer (AO) or comply with required procedures under an applicable waiver, as provided by the AO when procuring any of the following commodities:
 - (i) Agricultural commodities,
 - (ii) Motor vehicles,
 - (iii) Pharmaceuticals,
 - (iv) Pesticides,
 - (v) Used equipment,
 - (vi) U.S. Government-owned excess property, or
 - (vii) Fertilizer.

c. Source and Nationality:

Except as may be specifically approved in advance by the AO, all commodities and services that will be reimbursed by USAID under this award must be from the authorized geographic code specified in this award and must meet the source and nationality requirements set forth in 22 CFR 228. If the geographic code is not specified, the authorized geographic code is 937. When the total value of procurement for commodities and services during the life of this award is valued at \$250,000 or less, the authorized geographic code for procurement of all goods and services to be reimbursed under this award is code 935. For a current list of countries within each geographic code, see [ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID](#).

- d. Guidance on the eligibility of specific commodities and services may be obtained from the AO. If USAID determines that the recipient has procured any commodities or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the AO may require the recipient to refund the entire amount of the purchase.
- e. This provision must be included in all subawards and contracts, which include procurement of commodities or services.

[END OF PROVISION]

M7. TITLE TO AND USE OF PROPERTY (DECEMBER 2014)

- a. Title to all Property financed under this award vests in the recipient upon acquisition unless otherwise specified in this award.
- b. Property means equipment, supplies, real property, and intangible property, each defined individually below, financed under this award or furnished by USAID:
- (1) Equipment means tangible nonexpendable personal property (including information technology systems) having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. However, consistent with the recipient's policy, lower limits may be established.
 - (2) Supplies means tangible personal property excluding equipment. A computing device is a supply if the acquisition cost is less than \$5,000 per unit.
 - (3) Real Property means land, including land improvements, structures and

appurtenances, including permanent fixtures.

- (4) Intangible Property includes, but is not limited to, intellectual property, such as trademarks, copyrights, patents and patent applications, and debt instruments, such as bonds, mortgages, leases or other agreements between a lender and a borrower.
- c. The recipient agrees to use and maintain all Property for the purpose of this award in accordance with the following procedures:
- (1) The recipient must use the Property for the program for which it was acquired during the period of this award, and must not provide any third party a legal or financial interest in the property (e.g., through a mortgage, lien, or lease) without approval of USAID.
 - (2) When the Property is no longer needed for the program for which it was acquired during the period of this award, the recipient must use the Property in connection with its other activities, in the following order of priority:
 - (i) Activities funded by USAID, then
 - (ii) Activities funded by other United States Government (USG) agencies, then
 - (iii) As directed by the Agreement Officer (AO).
- d. The recipient must maintain the Property in good condition, have management procedures to protect the Property, and maintain an accurate inventory of all Property. Maintenance procedures must include the following:
- (1) Accurate description of the Property, including serial number, model number, or other identifying number, acquisition date and cost, location and condition, and data on the disposition of any Property (date of disposition, sales price, method used to determine current fair market value, etc.), as applicable.
 - (2) A physical inventory of Property that must be taken, and the results reconciled with the equipment records, at least once every two years during the period of this award.
 - (3) A control system must be in effect to maintain the Property and ensure adequate safeguards to prevent loss, damage, or theft of the Property. The recipient must maintain appropriate insurance equivalent to insurance the recipient maintains for its own property. Any loss, damage, or theft must be investigated and fully documented, and the recipient must promptly notify the AO. The recipient may be liable where insurance is not sufficient to cover losses or damage.

- e. Upon completion of this award, the recipient must submit to the AO a property disposition report of the following types of Property, along with a proposed disposition of such Property.
 - (1) All equipment that has a per unit current fair market value at the end of this award of \$5,000 or more.
 - (2) New/unused supplies with an aggregate current fair market value at the end of this award of \$5,000 or more.
 - (3) Real or intangible property, of any value.
- f. The recipient must dispose of Property at the end of this award in accordance with the recipient's property disposition report, unless the AO directs the recipient in writing within 60 days of the AO's receipt of the recipient's property disposition report to dispose of the Property in a different manner. Disposition may include the following:
 - (1) The recipient may retain title with no further obligation to USAID.
 - (2) The recipient may retain title, but must compensate USAID for the USAID share, based on the current fair market value of the Property.
 - (3) The recipient may be directed to transfer title to USAID or a third party, including another implementing partner or the host country government. In such case, the recipient will be compensated for its proportional share of the Property that the recipient financed with its own funds, if any, based on the current fair market value of the Property.
- g. The AO may direct, at any time during this award, that title to the Property vests in the USG or a third party, such as the cooperating country. In such cases, the recipient must maintain custody and control of the Property, until directed otherwise, and must allow reasonable access to the Property to the title holder. While in its custody and control, the recipient must follow the provisions above for protection and maintenance of the Property, and provide the AO with an annual inventory of such Property and follow any additional instructions on protection and maintenance as may be provided by the AO.
- h. This provision must be included in all subawards and contracts.

[END OF PROVISION]

M8. SUBMISSIONS TO THE DEVELOPMENT EXPERIENCE

CLEARINGHOUSE AND DATA RIGHTS (JUNE 2012)

a. Submissions to the Development Experience Clearinghouse (DEC).

- 1) The recipient must provide the Agreement Officer's Representative one copy of any Intellectual Work that is published, and a list of any Intellectual Work that is not published.
- 2) In addition, the recipient must submit Intellectual Work, whether published or not, to the DEC, either on-line (preferred) or by mail. The recipient must review the DEC Web site for submission instructions, including document formatting and the types of documents to submit. Submission instructions can be found at:

<http://dec.usaid.gov>

- 3) For purposes of submissions to the DEC, Intellectual Work includes all works that document the implementation, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the recipient under the award, whether published or not. The term does not include the recipient's information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.
- 4) Each document submitted should contain essential bibliographic information, such as 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) development objective; and 6) date of publication.
- 5) The recipient must not submit to the DEC any financially sensitive information or personally identifiable information, such as social security numbers, home addresses and dates of birth. Such information must be removed prior to submission. The recipient must not submit classified documents to the DEC.

b. Rights in Data

- 1) Data means recorded information, regardless of the form or the media on which it may be recorded, including technical data and computer software, and includes Intellectual Work, defined in a. above.
- 2) Unless otherwise provided in this provision, the recipient may retain the

rights, title and interest to Data that is first acquired or produced under this award. USAID reserves a royalty-free, worldwide, nonexclusive, and irrevocable right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

- c. Copyright. The recipient may copyright any books, publications or other copyrightable materials first acquired or produced under this award. USAID reserves a royalty-free, worldwide, nonexclusive, and irrevocable right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- d. The recipient will provide the U.S. Government, on request or as otherwise provided in this award, a copy of any Data or copyrighted material to which the U.S. Government has rights under paragraphs b. and c. of this provision. The U.S. Government makes no representations or warranties as to title, right to use or license, or other legal rights or obligations regarding any Data or copyrighted materials.

[END OF PROVISION]

M9. MARKING AND PUBLIC COMMUNICATIONS UNDER USAID-FUNDED ASSISTANCE (DECEMBER 2014)

- a. The USAID Identity is the official marking for USAID, comprised of the USAID logo and brandmark with the tagline “from the American people”, unless amended by USAID to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency initiative. The standard USAID logo must be used unless the award requires use of an additional or substitute logo. The USAID Identity (including any required presidential initiative or related identity) is available on the USAID Web site at www.usaid.gov. Recipients must use the USAID Identity, of a size and prominence equivalent to or greater than any other identity or logo displayed, to mark the following:
 - (1) Programs, projects, activities, public communications, and commodities partially or fully funded by USAID;
 - (2) Program, project, or activity sites funded by USAID, including visible infrastructure projects or other physical sites;
 - (3) Technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities, promotional, informational, media, or communications products funded by USAID;

- (4) Commodities, equipment, supplies, and other materials funded by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs; and
 - (5) Events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities. If the USAID Identity cannot be displayed, the recipient is encouraged to otherwise acknowledge USAID and the support of the American people.
- b. The recipient must implement the requirements of this provision following the approved Marking Plan in the award.
- c. The AO may require a preproduction review of program materials and “public communications” (documents and messages intended for external distribution, including but not limited to correspondence; publications; studies; reports; audio visual productions; applications; forms; press; and promotional materials) used in connection with USAID-funded programs, projects or activities, for compliance with an approved Marking Plan.
- d. The recipient is encouraged to give public notice of the receipt of this award and announce progress and accomplishments. The recipient must provide copies of notices or announcements to the Agreement Officer’s Representative (AOR) and to USAID’s Office of Legislative and Public Affairs in advance of release, as practicable. Press releases or other public notices must include a statement substantially as follows:

“The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide.”
- e. Any “public communication” in which the content has not been approved by USAID must contain the following disclaimer:

“This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.”
- f. The recipient must provide the USAID AOR, with two copies of all program and communications materials produced under this award.
- g. The recipient may request an exception from USAID marking

requirements when USAID marking requirements would:

- (1) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;
 - (2) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;
 - (3) Undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications;
 - (4) Impair the functionality of an item;
 - (5) Incur substantial costs or be impractical;
 - (6) Offend local cultural or social norms, or be considered inappropriate; or
 - (7) Conflict with international law.
- h. The recipient may submit a waiver request of the marking requirements of this provision or the Marking Plan, through the AOR, when USAID-required marking would pose compelling political, safety, or security concerns, or have an adverse impact in the cooperating country.
- (1) Approved waivers “flow down” to subawards and contracts unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.
 - (2) USAID determinations regarding waiver requests are subject to appeal by the recipient, by submitting a written request to reconsider the determination to the cognizant Assistant Administrator.
- i. The recipient must include the following marking provision in any subagreements entered into under this award:

“As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient’s, subrecipient’s, other donor’s, or third party’s is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its

discretion, require marking by the subrecipient with the USAID Identity.”

[END OF PROVISION]

M10. AWARD TERMINATION AND SUSPENSION (DECEMBER 2014)

- a. The recipient or Agreement Officer (AO) may terminate this award at any time, in whole or in part, upon written notice to the other party in accordance with the Standard Provision, “Notices.” The termination notice must contain the reason(s) for the termination; the effective date; and, in the case of a partial termination, the portion to be terminated. If the termination is based on non-compliance, note that this termination decision may be considered in selection for future awards.
- b. USAID may suspend this award, in whole or in part, at any time, following notice to the recipient, and prohibit the recipient from incurring additional obligations chargeable to this award other than those costs specified in the notice of suspension during the period of suspension.
- c. In the event the recipient or any of its employees, subrecipients, or contractors are found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140, USAID reserves the right to terminate this award, in whole or in part, or take any other appropriate measures including, without limitation, refund or recall of any award amount. Additionally, the recipient must make a good-faith effort to maintain a drug-free workplace and USAID reserves the right to terminate or suspend this award if the recipient materially fails to do so.
- d. Termination and Suspension Procedures. Upon receipt of, and in accordance with, a termination or suspension notice from USAID as specified above, the recipient must take immediate action to minimize all expenditures and, in the event of termination, cancel all obligations financed by this award to the greatest extent possible. Except as provided in this provision or as approved in writing by the AO, the recipient is not entitled to costs incurred after the effective date of termination.
- e. Within 30 calendar days after the effective date of such termination, the recipient must repay to the U.S. Government all unexpended USAID funds as of the effective date of termination, which are not otherwise obligated by a non-cancelable legally binding transaction applicable to this award.
- f. Should the funds paid by USAID to the recipient prior to the effective date of the termination of this award be insufficient to cover legally binding obligations to third parties by the recipient, the recipient may submit to USAID within 90 calendar days after the effective date of a termination a written claim covering

such recipient obligations. The AO must determine the amount(s) to be paid by USAID to the recipient under such claim in accordance with this provision and the Standard Provision, “Allowable Costs.”

- g. The recipient must, to the greatest extent possible, include a provision in all subawards, including subawards and contracts, affording the recipient the right to terminate the subaward in the event USAID terminates this award, including the refund requirement in paragraph c.

[END OF PROVISION]

M11. RECIPIENT AND EMPLOYEE CONDUCT (JUNE 2018)

- a. The recipient must have written policies and procedures in place to prevent personal conflicts of interest and to prevent its officers, employees, or agents from using their positions for personal gain or presenting the appearance of a personal conflict of interest. A personal conflict of interest is a situation in which an officer, employee, or agent of the recipient has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially when performing under the award. The recipient’s written policy must state that an employee, officer, or agent of the recipient, or any member of an employee’s immediate family cannot receive a subaward, or have a financial or other interest in the entity selected for a subaward without disclosing the conflict and following the recipient’s written policies and procedures for mitigating the conflict. In addition, the written policy must state that the officers, employees, and agents of the recipient must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or prospective subrecipients.
- b. The recipient, its employees, and consultants are prohibited from using U.S. Government information-technology systems (such as Phoenix, GLAAS, etc.), must be escorted to use U.S. Government facilities (such as office space or equipment), and may not rely on assistance from any U.S. Government clerical or technical personnel in the performance of this award, except as otherwise provided in this award.
- c. The recipient, its employees, and consultants are private individuals, are not employees of the U.S. Government, and must not represent themselves as such.
- d. The following requirements in this provision apply to the recipient's employees who are not citizens of the cooperating country.

(1) If the recipient’s employees enjoy exemptions from import limitations, customs duties or taxes on personal property in connection with performance of this award, the sale of such personal property is governed by the rules contained in 22 CFR 136, including a prohibition from profiting from such sale, except as

this may conflict with host-government regulations.

(2) Any outside business dealings of the recipient's employees must be legal and not conflict in any manner with this award. Outside business dealings include, but are not limited to, any investments, loans, employment, or business ownership by the recipient's employees, other than work to be performed under this award.

- e. As part of the recipient's internal controls and standards of employee conduct, the recipient must ensure that its employees adhere to these standards of conduct in a manner consistent with the standards for United Nations (UN) employees in Section 3 of the UN Secretary-General's Bulletin - Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).
- f. If the recipient determines that the conduct of any recipient employee is not in accordance with this provision or this award, the recipient's Chief of Party must coordinate with the Agreement Officer and the USAID Mission Director to resolve the situation with regard to such employee including, if necessary, termination of the employee. In the case of termination of a non-host country national, the recipient must use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.
- g. The parties recognize the rights of the U.S. Chief of Mission to direct the removal from a country of any U.S. citizen, or direct the discharge from this award of any individual (U.S., third-country, or cooperating-country national) when, at the discretion of the U.S. Chief of Mission, it is in the best interest of the United States.
- h. If it is determined, under paragraph (f) or (g) above, that the services of such employee should be terminated, the recipient must use its best efforts to cause the return of such employee to the United States, or third-country point of origin, as appropriate, and replace the employee with an acceptable substitute at no cost to USAID.
- g. The substance of this provision, including this paragraph g., must be included in all subawards. Any matters relating to subrecipients, including the employees of subrecipients, must be coordinated through the recipient's Chief of Party.

[END OF PROVISION]

M12. DEBARMENT AND SUSPENSION (JUNE 2012)

- a. The recipient must not transact or conduct business under this award with any individual or entity that has an active exclusion on the System for Award Management (SAM) (www.sam.gov) unless prior approval is received from the

Agreement Officer. The list contains those individuals and entities that the U.S. Government has suspended or debarred based on misconduct or a determination by the U.S. Government that the person or entity cannot be trusted to safeguard U.S. Government funds. Suspended or debarred entities or individuals are excluded from receiving any new work or any additional U.S. Government funding for the duration of the exclusion period. If the recipient has any questions about listings in the system, these must be directed to the Agreement Officer.

- b. The recipient must comply with Subpart C of 2 CFR Section 180, as supplemented by 2 CFR 780. USAID may disallow costs, annul or terminate the transaction, debar or suspend the recipient, or take other remedies as appropriate, if the recipient violates this provision. Although doing so is not automatic, USAID may terminate this award if a recipient or any of its principals meet any of the conditions listed in paragraph c. below. If such a situation arises, USAID will consider the totality of circumstances—including the recipient's response to the situation and any additional information submitted—when USAID determines its response.
- c. The recipient must notify the Agreement Officer immediately upon learning that it or any of its principals, at any time prior to or during the duration of this award:
 - (1) Are presently excluded or disqualified from doing business with any U.S. Government entity;
 - (2) Have been convicted or found liable within the preceding three years for committing any offense indicating a lack of business integrity or business honesty such as fraud, embezzlement, theft, forgery, bribery or lying;
 - (3) Are presently indicted for or otherwise criminally or civilly charged by any governmental entity for any of the offenses enumerated in paragraph c.(2); or
 - (4) Have had one or more U.S.-funded agreements terminated for cause or default within the preceding three years.
- d. Principal means—
 - (1) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
 - (2) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
 - (i) Is in a position to handle Federal funds;

- (ii) Is in a position to influence or control the use of those funds; or,
- (iii) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

- e. The recipient must include this provision in its entirety except for paragraphs c.(2)-(4) in any subawards or contracts entered into under this award.

[END OF PROVISION]

M13. DISPUTES AND APPEALS (DECEMBER 2014)

- a. Any dispute under this award will be decided by the Agreement Officer (AO). The AO must furnish the recipient a written copy of the decision.
- b. Decisions of the AO are final unless the recipient appeals the decision to USAID's Deputy Assistant Administrator, Bureau for Management. Any appeal made under this provision must be in writing, postmarked within 30 calendar days of receipt of the AO's decision; include all relevant and material evidence; and be addressed to the Deputy Assistant Administrator, Bureau for Management, U.S. Agency for International Development, Management Bureau, 1300 Pennsylvania Ave, NW, Washington, D.C. 20523. A copy of the appeal must be concurrently furnished to the AO. No hearing will be provided.
- c. A decision under this provision by the Deputy Assistant Administrator, Bureau for Management is final.
- d. Notwithstanding any other term of this award, subawardees and contractors have no right to submit claims directly to USAID and USAID assumes no liability for any third party claims against the recipient.

[END OF PROVISION]

M14. PREVENTING TRANSACTIONS WITH, OR THE PROVISION OF RESOURCES OR SUPPORT TO, SANCTIONED GROUPS AND INDIVIDUALS (MAY 2020)

- a. In carrying out activities under this award, except as authorized by a license issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury, the recipient will not engage in transactions with, or provide resources or support to, any individual or entity that is subject to sanctions administered by OFAC or the United Nations (UN), including any individual or entity that is included on the Specially Designated Nationals and Blocked Persons List maintained by OFAC (<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or on the UN Security Council consolidated list

<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>).

- b. Any violation of the above will be grounds for unilateral termination of the agreement by USAID.
- c. The Recipient must include this provision in all subawards and contracts issued under this award.

[END OF PROVISION]

M15. TRAFFICKING IN PERSONS (April 2016)

- a. The recipient, subawardee, or contractor, at any tier, or their employees, labor recruiters, brokers or other agents, must not engage in:
 - (1) Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the period of this award;
 - (2) Procurement of a commercial sex act during the period of this award;
 - (3) Use of forced labor in the performance of this award;
 - (4) Acts that directly support or advance trafficking in persons, including the following acts:
 - i. Destroying, concealing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
 - ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
 - a) exempted from the requirement to provide or pay for such return transportation by USAID under this award; or
 - b) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;
 - iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

- iv. Charging employees recruitment fees; or
 - v. Providing or arranging housing that fails to meet the host country housing and safety standards.
- b. In the event of a violation of section (a) of this provision, USAID is authorized to terminate this award, without penalty, and is also authorized to pursue any other remedial actions authorized as stated in section 1704(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013).
- c. If the estimated value of services required to be performed under the award outside the United States exceeds \$500,000, the recipient must submit to the Agreement Officer, the annual "Certification regarding Trafficking in Persons, Implementing Title XVII of the National Defense Authorization Act for Fiscal Year 2013" as required prior to this award, and must implement a compliance plan to prevent the activities described above in section (a) of this provision. The recipient must provide a copy of the compliance plan to the Agreement Officer upon request and must post the useful and relevant contents of the plan or related materials on its website (if one is maintained) and at the workplace.
- d. The recipient's compliance plan must be appropriate to the size and complexity of the award and to the nature and scope of the activities, including the number of non-United States citizens expected to be employed. The plan must include, at a minimum, the following:
- (1) An awareness program to inform employees about the trafficking related prohibitions included in this provision, the activities prohibited and the action that will be taken against the employee for violations.
 - (2) A reporting process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking, including a means to make available to all employees the Global Human Trafficking Hotline at 1-844-888-FREE and its e-mail address at help@befree.org.
 - (3) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging of recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
 - (4) A housing plan, if the recipient or any subawardee intends to provide or arrange housing. The housing plan is required to meet any host-country housing and safety standards.

- (5) Procedures for the recipient to prevent any agents or subawardee at any tier and at any dollar value from engaging in trafficking in persons activities described in section a of this provision. The recipient must also have procedures to monitor, detect, and terminate any agents or subawardee or subawardee employees that have engaged in such activities.
- e. If the Recipient receives any credible information regarding a violation listed in section a(1)-(4) of this provision, the recipient must immediately notify the cognizant Agreement Officer and the USAID Office of the Inspector General; and must fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.
- f. The Agreement Officer may direct the Recipient to take specific steps to abate an alleged violation or enforce the requirements of a compliance plan.
- g. For purposes of this provision, “employee” means an individual who is engaged in the performance of this award as a direct employee, consultant, or volunteer of the recipient or any subrecipient.
- h. The recipient must include in all subawards and contracts a provision prohibiting the conduct described in section a(1)-(4) by the subrecipient, contractor, or any of their employees, or any agents. The recipient must also include a provision authorizing the recipient to terminate the award as described in section b of this provision.

[END OF PROVISION]

M16. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)

a. Requirements for Voluntary Sterilization Programs

- (1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

b. Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a

method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term “motivate,” as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.

[END OF PROVISION]

M17. EQUAL PARTICIPATION BY FAITH-BASED ORGANIZATIONS (JUNE 2016)

a. Faith-Based Organizations Encouraged

Faith-based organizations are eligible, on the same basis as any other organization, to participate in any USAID program for which they are otherwise eligible. Neither USAID nor entities that make and administer subawards of USAID funds shall discriminate for or against an organization on the basis of the organization’s religious character or affiliation. Additionally, religious organizations shall not be disqualified from participating in USAID programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference. Awards must be made on the basis of merit, not the basis of the religious affiliation of an applicant, or lack thereof. A faith-based organization may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, within the limits contained in this provision. For more information, see the [USAID Faith-Based and Community Initiatives Web site](#) and [22 CFR 205.1](#).

b. Explicitly Religious Activities Prohibited.

- (1) Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, prayer, or proselytization.

- (2)** The recipient must not engage in explicitly religious activities as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in explicitly religious activities, the activities must be offered separately, in time or location, from any programs or services directly funded by this award, and participation must be voluntary for beneficiaries of the programs or services funded with USAID assistance.
- (3)** These restrictions apply equally to religious and secular organizations. All organizations that participate in USAID programs, as recipients or subawardees, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing USAID-funded activities.
- (4)** Notwithstanding the restrictions of b.(1) and (2), a religious organization that participates in USAID-funded programs or services:
 - (i) May retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support or engage in any explicitly religious activities or in any other manner prohibited by law;
 - (ii) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols; and
 - (iii) May retain its authority over its internal governance, and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- c.** Implementation in accordance with the Establishment Clause: Nothing in this provision shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law.
- d.** Discrimination Based on Religion Prohibited: The recipient must not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief or a refusal to attend or participate in a religious practice.
- e.** A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1 is not forfeited when the organization receives financial assistance from USAID.
- f.** The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is

necessary to further the national security or foreign policy interests of the United States.

- g. This provision must be included in all subawards under this award.

[END OF PROVISION]

M18. NONDISCRIMINATION (JUNE 2012)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color, national origin, age, disability, or sex under any program or activity funded by this award when work under the grant is performed in the U.S. or when employees are recruited from the U.S.

Additionally, USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination, including harassment, in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. In addition, the Agency strongly encourages its recipients and their subrecipients and vendors (at all tiers), performing both in the U.S. and overseas, to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law.

[END OF PROVISION]

M19. USAID DISABILITY POLICY - ASSISTANCE (JUNE 2012)

The recipient must not discriminate against people with disabilities in the implementation of USAID funded programs and should demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

[END OF PROVISION]

M20. LIMITING CONSTRUCTION ACTIVITIES (AUGUST 2013)

APPLICABILITY: *In accordance with the policy at ADS 303.3.30, AOs must include this provision in all solicitations and awards. When no construction activities are contemplated under the award, the AO must insert "Construction is not eligible for reimbursement under this award" in section d) of this provision. If the award permits*

construction activities based on the policy above (or as authorized by waiver), the AO must insert the description and location(s) of the specific construction activities in section d) of this provision. The AO must not make a general reference to the Program Description. The AO must also ensure that there is a specific line item for construction activities in the award budget.

LIMITING CONSTRUCTION ACTIVITIES (AUGUST 2013)

- a) Construction is not eligible for reimbursement under this award unless specifically identified in paragraph d) below.
- b) Construction means —construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property and includes, without limitation, improvements, renovation, alteration and refurbishment. The term includes, without limitation, roads, power plants, buildings, bridges, water treatment facilities, and vertical structures.
- c) Agreement Officers will not approve any subawards or procurements by recipients for construction activities that are not listed in paragraph d) below. USAID will reimburse allowable costs for only the construction activities listed in this provision not to exceed the amount specified in the construction line item of the award budget. The recipient must receive prior written approval from the AO to transfer funds allotted for construction activities to other cost categories, or vice versa.
- d) Description
[Type of construction and location(s)]
- e) The recipient must include this provision in all subawards and procurements and make vendors providing services under this award and subrecipients aware of the restrictions of this provision.

[END OF PROVISION]

M21. USAID IMPLEMENTING PARTNER NOTICES (IPN) PORTAL FOR ASSISTANCE (JULY 2014)

APPLICABILITY: *For use in all solicitations and resulting awards. Please refer to [ADS 303, Section 303.3.31, “USAID Implementing Partner Notices \(IPN\) Portal For Assistance”](#) for additional guidance.*

USAID IMPLEMENTING PARTNER NOTICES (IPN) PORTAL FOR ASSISTANCE (JULY 2014)

- (a) Definitions

“USAID Implementing Partner Notices (IPN) Portal for Assistance (“IPN Portal)” means the single point where USAID posts proposed universal bilateral amendments for USAID awards, which can be accessed electronically by registered USAID recipients. The IPN Portal is located at <https://sites.google.com/site/usaaidipnforassistance/>.

“IPN Portal Administrator” means the USAID official designated by the Director, M/OAA, who has overall responsibility for managing the USAID Implementing Partner Notices Portal for Assistance.

“Universal bilateral amendment” means those amendments with revisions or new requirements or provisions that affect all awards or a designated class of awards, as specified in the Agency notification of such revisions or new requirements.

(b) By submission of an application and execution of an award, the Applicant/Recipient acknowledges the requirement to:

- (1)** Register with the IPN Portal if awarded an assistance award resulting from this solicitation, and
- (2)** Receive universal bilateral amendments to this award and general notices via the IPN Portal.

(c) Procedure to register for notifications.

Go to <https://sites.google.com/site/usaaidipnforassistance/> and click the “Register” button at the top of the page. Recipient representatives must use their official organization email address when subscribing, not personal email addresses.

(d) Processing of IPN Portal Amendments

The Recipient may access the IPN Portal at any time to review all IPN Portal amendments; however, the system will also notify the Recipient by email when the USAID IPN Portal Administrator posts a universal bilateral amendment for Recipient’s review and signature. Proposed USAID IPN Portal amendments distributed via the IPN Portal are applicable to all awards, unless otherwise noted in the proposed amendment.

Within 15 calendar days from receipt of the notification email from the IPN Portal, the Recipient must do one of the following:

- (1)** (a) verify applicability of the proposed amendment for their award(s) per the instructions provided with each amendment; (b) download the amendment and incorporate the following information on the amendment form: award number, organization name, and organization mailing address as it appears in the basic award; (c) sign the hardcopy version; and (d) send the signed amendment (by email or hardcopy) to the AO for signature. The Recipient must not incorporate any other changes to the IPN Portal amendment. Bilateral amendments provided

through the IPN Portal are not effective until the both the Recipient and the AO sign the amendment;

(2) Notify the AO in writing if the amendment requires negotiation of additional changes to terms and conditions of the award; or

(3) Notify the AO that the Recipient declines to sign the amendment.

Within 30 calendar days of receipt of a signed amendment from the Recipient, the AO must provide the fully executed amendment to the Recipient or initiate discussions with the Recipient.

[End of Provision]

M22. PILOT PROGRAM FOR ENHANCEMENT OF GRANTEE EMPLOYEE WHISTLEBLOWER PROTECTIONS (SEPTEMBER 2014)

The requirement to comply with and inform all employees of the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is retroactively effective for all assistance awards and subawards (including subcontracts) issued beginning July 1, 2013.

The Grantee must:

1. Inform its employees working under this award in the predominant native language of the workforce that they are afforded the employee whistleblower rights and protections provided under 41 U.S.C. § 4712; and
2. Include such requirement in any subaward or subcontract made under this award.

41 U.S.C. § 4712 states that an employee of a Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes" is evidence of any of the following:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or

- A violation of law, rule, or regulation related to a Federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of the U.S. Congress, or a representative of a U.S. Congressional Committee;
- A cognizant U.S. Inspector General;
- The U.S. Government Accountability Office;
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- A U.S. court or grand jury; or,
- A management official or other employee of the Grantee who has the responsibility to investigate, discover, or address misconduct.

[End of Provision]

M23. SUBMISSION OF DATASETS TO THE DEVELOPMENT DATA LIBRARY (OCTOBER 2014)

a. Definitions. For the purpose of submissions to the DDL:

- (1) “Dataset” is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a Dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. This requirement does not apply to aggregated performance reporting data that the recipient submits directly to a USAID portfolio management system or to unstructured data, such as email messages, PDF files, PowerPoint presentations, word processing documents, photos and graphic images, audio files, collaboration software, and instant messages. Neither does the requirement apply to the recipient’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information. Datasets submitted to the DDL will generally be those generated with USAID resources and created in support of Intellectual Work that is uploaded to the Development Experience Clearinghouse (DEC) **(See M8. SUBMISSIONS TO THE DEVELOPMENT EXPERIENCE CLEARINGHOUSE AND DATA RIGHTS (JUNE 2012)).**
- (2) “Intellectual Work” includes all works that document the implementation, monitoring, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and

assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the recipient under the award, whether published or not. The term does not include the recipient's information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

b. Submissions to the Development Data Library (DDL)

- (1) The recipient must submit to the Development Data Library (DDL) at www.usaid.gov/data, in a machine-readable, non-proprietary format, a copy of any Dataset created or obtained in performance of this award, including Datasets produced by a subawardee or a contractor at any tier. The submission must include supporting documentation describing the Dataset, such as code books, data dictionaries, data gathering tools, notes on data quality, and explanations of redactions.
- (2) Unless otherwise directed by the Agreement Officer (AO) or the Agreement Officer Representative (AOR), the recipient must submit the Dataset and supporting documentation to the DDL within thirty (30) calendar days after the Dataset is first used to produce an Intellectual Work or is of sufficient quality to produce an Intellectual Work. Within thirty (30) calendar days after award completion, the recipient must submit to the DDL any Datasets and supporting documentation that have not previously been submitted to the DDL, along with an index of all Datasets and Intellectual Work created or obtained under the award. The recipient must also provide to the AOR an itemized list of any and all DDL submissions.

The recipient is not required to submit the data to the DDL, when, in accordance with the terms and conditions of this award, Datasets containing results of federally funded scientific research are submitted to a publicly accessible research database. However, the recipient must submit a notice to the DDL by following the instructions at www.usaid.gov/data, with a copy to the agreement officer representative, providing details on where and how to access the data. The direct results of federally funded scientific research must be reported no later than when the data are ready to be submitted to a peer-reviewed journal for publication, or no later than five calendar days prior to the conclusion of the award, whichever occurs earlier.

- (3) The recipient must submit the Datasets following the submission instructions and acceptable formats found at www.usaid.gov/data.

- (4) The recipient must ensure that any Dataset submitted to the DDL does not contain any proprietary or personally identifiable information, such as social security numbers, home addresses, and dates of birth. Such information must be removed prior to submission.
- (5) The recipient must not submit classified data to the DDL.

[End of Provision]

M24. PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (MAY 2017)

(a) Definitions.

“Contract” has the meaning given in 2 CFR Part 200.

“Contractor” means an entity that receives a contract as defined in 2 CFR Part 200.

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the recipient requires any of its employees or subrecipients to sign regarding nondisclosure of recipient information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that recipient employees or subrecipients sign at the behest of a Federal agency.

“Subaward” has the meaning given in 2 CFR Part 200.

“Subrecipient” has the meaning given in 2 CFR Part 200.

(b) The recipient must not require its employees, subrecipients, or contractors to sign or comply with internal confidentiality agreements or statements that prohibit or otherwise restrict employees, subrecipients, or contractors from lawfully reporting waste, fraud, or abuse related to the performance of a Federal award to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (for example, the Agency Office of the Inspector General).

(c) The recipient must notify current employees and subrecipients that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this provision, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this provision, are no longer in effect.

(d) The prohibition in paragraph (b) of this provision does not contravene the requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the recipient is not in compliance with the requirements of this provision.

(f) The recipient must include the substance of this provision, including this paragraph (f), in subawards and contracts under such awards.

(End of Provision)

M25. CHILD SAFEGUARDING (June 2015)

(a) Because the activities to be funded under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, these activities could raise the risk of child abuse, exploitation, or neglect within USAID-funded programs. The organization agrees to abide by the following child safeguarding core principles:

- (1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;
- (2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;
- (3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;
- (4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image-generating activities of children;
- (5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and

- (6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that personnel and others report allegations; investigating and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.
- (b) The organization must also include in their code of conduct for all personnel implementing USAID-funded activities the child safeguarding principles in (a) (1) through (6).
- (c) The following definitions apply for purposes of this provision:
 - (1) Child: A child or children are defined as persons who have not attained 18 years of age.
 - (2) Child abuse, exploitation, or neglect: Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes, but is not limited to: any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.
 - (3) Physical abuse: Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.
 - (4) Sexual Abuse: Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.
 - (5) Emotional abuse or ill treatment: Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: humiliation, control, isolation, withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.
 - (6) Exploitation: Constitutes the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.

(7) Neglect: Constitutes failure to provide for a child's basic needs within USAID-funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.

(d) The recipient must insert the provisions in (a) and (b) in all subawards under this award.

[End of Provision]

M26. MANDATORY DISCLOSURES (July 2015)

Consistent with 2 CFR §200.113, applicants and recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the prime recipient (pass through entity) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Disclosures must be sent to:

U.S. Agency for International Development
Office of the Inspector General
P.O. Box 657
Washington, DC 20044-0657

Phone: [1-800-230-6539](tel:1-800-230-6539) or [202-712-1023](tel:202-712-1023)

Email: ig.hotline@usaid.gov

URL: <https://oig.usaid.gov/content/usaid-contractor-reporting-form>.

Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321).

The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award.

[End of Provision]

M27. NONDISCRIMINATION AGAINST BENEFICIARIES (November 2016)

(a) USAID policy requires that the recipient not discriminate against any beneficiaries in implementation of this award, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to the benefits provided through this award on the basis of any factor not expressly stated in the award. This includes, for example, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, disability, age, genetic information, marital status, parental status, political affiliation, or veteran's status. Nothing in this provision is intended to limit the ability of the recipient to target activities toward the assistance needs of certain populations as defined in the award.

(b) The recipient must insert this provision, including this paragraph, in all subawards and contracts under this award.

[End of Provision]

M28. CONFLICT OF INTEREST (August 2018)

- a. A conflict of interest in the award, administration, or monitoring of subawards arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a non-federal entity considered for a subaward. The officers, employees, and agents of the non-federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or parties to subawards. However, pass-through entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the pass-through entity.
- b. The recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of subawards. The standards must prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a conflict of interest.
- c. The non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a subaward action involving a related organization.
- d. The recipient must have a system or systems in place to identify, address, resolve, and disclose to USAID any conflicts of interest as described in this

provision that affect any subaward, regardless of the amount funded under this award.

- e. The recipient must disclose any conflict of interest and the recipient's approach for resolving the conflict of interest to the cognizant Agreement Officer for the award within 10 calendar days of the discovery of the conflict of interest.
- f. Upon notice from the recipient of a potential conflict of interest and the approach for resolving it, the Agreement Officer will make a determination regarding the effectiveness of the recipient's actions to resolve the conflict of interest within 30 days of receipt of the recipient's notice, unless the Agreement Officer advises the recipient that a longer period is necessary.
- g. The recipient cannot request payment from USAID for costs for transactions subject to the conflict of interest pending notification of USAID's determination. Failure to disclose a conflict of interest may result in cost disallowances.
- h. For conflicts of interest, including organizational conflicts of interest, involving contracts, the recipient must follow 2 CFR 200.318, general procurement standards.
- i. The recipient must insert the substance of this provision, including paragraph (i), in all subawards under this award, at any subaward tier.

[End Of Provision]

M29. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment (August 2020)

a. The Recipient is prohibited from using grant funds, including direct and indirect costs, program income, and any cost share to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

b. Telecommunication costs and video surveillance costs incurred for telecommunications and video surveillance services and equipment such as phones,

internet, video surveillance, and cloud servers are allowable except for those referenced in paragraph a. above.

c. Definitions. The terms used in this provision have the following meanings:

(1) "Covered telecommunication equipment or services" as defined in [Pub. L. 115-232, Section 889](#), means any of the following:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) "Covered foreign country" is defined in [Pub. L. 115-232, Section 889](#) as the People's Republic of China.

(3) "Telecommunications costs" as defined in 2 CFR 200.1 means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

d. This provision must be incorporated into all subawards.

[END OF PROVISION]

[END OF MANDATORY PROVISIONS]

REQUIRED AS APPLICABLE STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL ORGANIZATIONS

RAA1. ADVANCE PAYMENT AND REFUNDS (DECEMBER 2014)

APPLICABILITY: *This provision must be incorporated into awards that authorize advance payments, which may be authorized when the recipient's accounting and financial management systems conform to the accounting principles generally accepted for funds control and accountability required under the Standard Provision, "Accounting, Audit, and Records," and meet the pre-award responsibility requirements in ADS Chapter 303.*

ADVANCE PAYMENT AND REFUNDS (DECEMBER 2014)

- a. The recipient is not required to maintain separate bank accounts for USAID funds, unless otherwise required. However, when advances are authorized by this award, the recipient must deposit such funds in a reputable bank and be able to account for the receipt and expenditure of funds and interest earned on the advances provided by the U.S. Government (USG).
- b. The recipient must maintain advances of USAID funds in interest-bearing accounts, unless:
 - (1) The recipient receives less than \$120,000 in USG awards per year;
 - (2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$250 in a twelve month period on USG cash balances; or
 - (3) The bank would require an average or minimum balance so high that it would not be practical to maintain the advance in an interest-bearing account.
- c. The recipient may retain up to \$250 of interest earned in a twelve-month period on USG cash balances for administrative expenses. Any additional interest earned on advances must be remitted to the USAID payment office specified in this award, or such other location as the payment office advises.
- d. The recipient must request advance payments for anticipated expenditures at time intervals as close as is administratively feasible to the actual disbursements by the recipient, and for the minimum amounts necessary.
- e. To request an advance payment, the recipient must submit (preferably electronically) to the payment office the Standard Form-270 Request for Advance, Standard Form-425 Federal Financial Report or Standard Form-1034

Public Voucher for Purchases and Services Other Than Personal. (See <http://www.gsa.gov/portal/forms/type/SF> for forms.) The recipient must print the statement "Request for Advance" at the top of the form.

- f. In order to obtain the initial advance, the recipient must request an advance for the initial thirty-day period of projected cash disbursement needs immediately upon signing this award. Additional advance payment requests must be submitted at least three weeks prior to the period for which funds are needed, in order to maintain a consistent cash flow. The recipient may submit requests for advances to the paying office specified in this award as often as may be necessary to meet projected expenses. An advance may not exceed 30 days of the organization's projected expenses. Subject to Chief Financial Officer (CFO) or Mission Controller approval (as appropriate), requests may be submitted:
- (1) Every 30 days covering a 30-day period;
 - (2) Three requests may be submitted covering 30-day sub-periods of a 90-day period to be paid automatically every 30 days; or
 - (3) One request for 90 days may be submitted to be automatically disbursed in 30-day equal increments.

Requests must state the estimated disbursements to be made during the period covered by the request, the estimated balance of cash on hand from prior advance requests, and the advance amount being requested.

- g. The recipient must submit an SF-270, SF-425, or SF-1034 (*with the words "Liquidation of Advances" printed at the top of the form*), quarterly, no later than 30 days after the end of the quarter, to the paying office specified in this award in order to liquidate outstanding advances. Failure to provide these quarterly reports may result in the suspension, disruption, or termination of additional payments.

Within 90 days following the expiration of this award, the recipient must submit the final financial report using the SF-270, SF-425, or SF-1034 showing total disbursements, total advances received, and any cash remaining on hand, which the recipient must refund to USAID.

- h. When this award expires, the recipient must immediately return all unexpended funds that USAID has advanced to the recipient, unless such advanced funds have already been spent or committed in a legally binding transaction during the period of this award, or are required for approved close-out costs. USAID reserves the right, at any time, to 1) withhold or offset payments to or 2) require refund by, the recipient of any amount that the recipient did not spend according to the terms and conditions of this award or are otherwise determined by the Agreement Officer to be unallowable. USAID retains the right to a refund of all

amounts paid under this award until all outstanding audit findings and settlement claims have been resolved between USAID and the recipient.

- i. Cash advances made by the recipient to subrecipients or the recipient's field organizations must conform substantially to paragraphs a., b., c., d. and h. of this provision. In the case of paragraph c., any interest over \$250 per account, per year must be remitted through the prime recipient.

[END OF PROVISION]

RAA2. REIMBURSEMENT PAYMENT AND REFUNDS (DECEMBER 2014)

APPLICABILITY: *This provision must be incorporated into awards that authorize payment by reimbursement.*

REIMBURSEMENT PAYMENT AND REFUNDS (DECEMBER 2014)

- a. The recipient must submit to the payment office noted in this award, a fully completed and signed SF-1034, Public Voucher for Purchases and Services Other Than Personal and SF 1034A, Continuation of SF 1034, bi-weekly or monthly, but not less frequently than quarterly. The Standard Form-270 Request for Advance and Standard Form-425 Federal Financial Report can also be used. Each voucher must be identified by this award number, must state the total costs for which reimbursement is being requested. The recipient is encouraged to submit reimbursement documentation in electronic form via e-mail attachment to the e-mail address shown for the payment office. Reimbursement documentation may also be submitted by facsimile or in paper form to the payment office fax number or address provided in this award.
- b. The Standard Forms can be obtained from the GSA forms Web site at: <http://www.gsa.gov/portal/forms/type/SF> or may also be obtained from the USAID payment office.
- c. Notwithstanding any other term of this award, USAID reserves the right, at any time, to 1) withhold or offset payments to or 2) require refund by, the recipient of any amount that the recipient did not spend according to the terms and conditions of this award or are otherwise determined by the Agreement Officer to be unallowable. USAID retains the right to a refund of all amounts paid under this award until all outstanding audit findings and settlement claims have been resolved between USAID and the recipient.

[END OF PROVISION]

RAA3. INDIRECT COSTS – NEGOTIATED INDIRECT COST RATE AGREEMENT (NICRA) (DECEMBER 2014)

APPLICABILITY: *This provision is only applicable to awards to recipients that currently have a Negotiated Indirect Cost Rate Agreement (NICRA).*

INDIRECT COSTS – NEGOTIATED INDIRECT COST RATE AGREEMENT (NICRA) (DECEMBER 2014)

a. Definitions. As used in this clause—

“Indirect (Facilities & Administrative (F&A)) costs” means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

“Indirect cost rate proposal” means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) through Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals of this part.

“Nonprofit organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit; and
- (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

- b. Provisional indirect cost rates must be established for the recipient's fiscal years during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs will be reimbursed at the rates, on the bases, and for the periods shown in the Schedule of this award.
- c. The recipient must submit to the Agreement Officer (AO) the proposed final indirect cost rates with supporting cost data, within the earlier of 30 days after receipt of the audit report or nine months after the end of the audit period. The

proposed rates must be based on the recipient's actual costs during the recipient's applicable fiscal year. Negotiation of final indirect cost rates will begin soon after receipt of the recipient's proposal.

Except as otherwise provided in 2 CFR 200.414 Indirect (F&A) costs paragraph (e), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year. Negotiation of final indirect cost rates will begin soon after receipt of the recipient's proposal.

- d. Allowability of costs and acceptability of cost allocation methods will be determined in accordance with the applicable cost principles. The applicable cost principles can be found in the Standard Provision, "Allowable Cost."
- e. The results of each negotiation will be set forth in a Negotiated Indirect Cost Rate Agreement (NICRA) signed by both parties, and is automatically incorporated into this award. This award must specify (1) the agreed upon provisional and final indirect cost rate(s), (2) the bases to which the rates apply, and (3) the fiscal year for which the rates apply. The NICRA will not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- f. Pending establishment of final indirect cost rates for any fiscal year, the recipient will be reimbursed either at negotiated provisional rates or at billing rates acceptable to the AO, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year.
- g. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

[END OF PROVISION]

RAA4. INDIRECT COSTS – CHARGED AS A FIXED AMOUNT (NONPROFIT) (JUNE 2012)

APPLICABILITY: *This provision is applicable to awards where all of the following are true: 1) the recipient has never received a Negotiated Indirect Cost Rate Agreement*

(NICRA); 2) the recipient has chosen not to use the 10% de minimis rate authorized in 2 CFR 200.414(f)); and 3) the indirect costs are not included as other direct costs in the budget. When using this provision, all indirect costs must be charged as a fixed amount and must be shown as a separate line item in the budget.

INDIRECT COSTS – CHARGED AS A FIXED AMOUNT (NONPROFIT) (JUNE 2012)

- a. The recipient will be paid a fixed amount to cover indirect costs, as provided below. Indirect costs are common costs that benefit the day-to-day operations of the organization, including categories such as salaries and expenses of executive officers, personnel administration, and accounting, or that benefit and are identifiable to more than one program or activity, such as depreciation, rental costs, operations and maintenance of facilities, and telephone expenses. In determining the fixed amount, these costs must be prorated equitably and consistently across all programs and activities of the recipient using a base that measures the benefits of that particular cost to each program or activity to which the cost applies. The bases must be established in accordance with reasonable criteria, and be supported by current data. Indirect costs must then be charged to the programs they benefit.
- b. The fixed amount for indirect costs and a schedule for payments must be incorporated into the award budget. This award must specify the categories of costs, as described in paragraph a., that are covered by the fixed amount, and the recipient must not charge such costs separately as direct costs. Any deviations must be approved, in advance, in writing, by the Agreement Officer (AO).
- c. USAID will not pay the recipient in excess of the negotiated fixed amount for indirect costs, as authorized in this award. Similarly, where the actual costs are less than the agreed fixed amount for indirect costs included in the award budget, the recipient will not be liable to return the difference to USAID. However, if the total costs, including direct costs and the indirect costs described in a., that USAID is supporting through this award change significantly (that is, by 20 percent or more in the aggregate), the AO reserves the right to adjust the fixed amount for indirect costs to equitably charge the indirect costs that benefit this award.

[END OF PROVISION]

RAA5. INDIRECT COSTS – DE MINIMIS RATE (MAY 2020)

APPLICABILITY: *This provision is applicable to awards where the recipient has never received a negotiated indirect cost rate and has elected to charge a de minimis rate of up to 10% of modified total direct costs (MTDC). When using this provision, the award budget must reflect the de minimis rate of 10% or a lesser amount if requested by the*

recipient. The award budget must not include direct costs that the recipient indicated were included in the indirect rate.

INDIRECT COSTS – DE MINIMIS RATE (MAY 2020)

- a. The recipient will be paid a de minimis rate of up to 10% of its modified total direct costs (MTDC) to cover indirect costs, as provided below. Indirect costs are common costs that benefit the day-to-day operations of the organization, including categories such as salaries and expenses of executive officers, personnel administration, and accounting, or that benefit and are identifiable to more than one program or activity, such as depreciation, rental costs, operations and maintenance of facilities, and telephone expenses. The actual rate will be established in the award budget.
- b. MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the prior written approval of the Agreement Officer.
- c. The recipient must consistently charge its costs as either indirect or direct costs but must not double charge or inconsistently charge the same cost or categories of costs as both.
- d. If chosen, once elected, this rate and methodology must be used consistently for all Federal awards until the recipient has an approved Negotiated Indirect Cost Rate.

[END OF PROVISION]

RAA6. UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT (July 2015)

APPLICABILITY: *This provision is required in accordance with 2 CFR 25, Universal Identifier And System of Award Management. Agreement Officers (AOs) must include this provision in all assistance solicitations and all awards, unless the AO exempts an organization from compliance with the provision under one of the following exceptions, from paragraph d. below:*

Exceptions. *The requirements of this provision to obtain a Data Universal Numbering System (DUNS) number and maintain a current registration in the System of Award Management (SAM) do not apply, at the prime award or subaward level, to:*

(1) Awards to individuals

(2) Awards less than \$25,000 to foreign recipients to be performed outside the United States (based on a USAID determination)

(3) Awards where the AO determines, in writing, that these requirements would cause personal safety concerns.

UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT (July 2015)

- a. Requirement for System of Award Management (SAM).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently, if required by changes in your information or another award term.
- b. Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:
 - (1) Must notify potential subrecipients that no entity (see definition in paragraph c. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- c. Definitions.** For purposes of this award term:
 - (1) System of Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at www.sam.gov).
 - (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at fedgov.dnb.com/webform).
 - (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR 25, subpart C:

- (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (4) Subaward:
- (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you, as the recipient, award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 subpart F Audit Requirements).
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- (5) Subrecipient means an entity that:
- (i) Receives a subaward from you under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

ADDENDUM (JUNE 2012):

a. Exceptions. The requirements of this provision to obtain a Data Universal Numbering System (DUNS) number and maintain a current registration in the System of Award Management (SAM) do not apply, at the prime award or subaward level, to:

- (1) Awards to individuals
- (2) Awards less than \$25,000 to foreign recipients to be performed outside the United States (based on a USAID determination)
- (3) Awards where the Agreement Officer determines, in writing, that these requirements would cause personal safety concerns.

b. This provision does not need to be included in subawards.

[END OF PROVISION]

RAA7. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (DECEMBER 2014)

APPLICABILITY: *This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation. AOs must include this provision in all assistance solicitations and all awards expected to exceed \$25,000, unless an exemption applies under paragraph d. of the provision or the exemptions listed below in this applicability statement. If the AO determines that an exemption applies, the AO must provide guidance to the recipient on reporting with generic information.*

Exemptions.

- (1) *The requirements to report under this provision do not apply to:*
 - (i) *Awards to individuals*
 - (ii) *Awards less than \$25,000*
- (2) *When the AO determines, in writing, that these requirements would cause personal safety concerns, reporting under this provision can be accomplished using generic information.*

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (DECEMBER 2014)

a. Reporting of First-Tier Subawards.

- (1) **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
- (2) **Where and when to report.**
 - (i) You must report each obligating action described in paragraph a.(1) of this award term to www.fsrs.gov.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

- (3) What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

- (1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - (i) The total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) In the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report executive total compensation described in paragraph b.(1) of this award term:
 - (i) As part of your registration profile at www.sam.gov/.
 - (ii) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- (1) Applicability and what to report. Unless you are exempt, as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the

subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

- (i) In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report subrecipient executive total compensation described in paragraph c.(1) of this award term:
- (i) To the recipient.
 - (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (for example, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If in the previous tax year you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions.

For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR 25:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization;
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 subpart F Audit Requirements).
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- (4) Subrecipient means an entity that:
 - (i) Receives a subaward from you (the recipient) under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

- (5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- (i) Salary and bonus.
 - (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) Earnings for services under nonequity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (v) Above-market earnings on deferred compensation which is not tax-qualified.
 - (vi) Other compensation, if the aggregate value of all such other compensation (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[END OF PROVISION]

RAA8. SUBAWARDS (DECEMBER 2014)

APPLICABILITY: *This provision is applicable when subawards are expected to be financed under this award.*

SUBAWARDS (DECEMBER 2014)

- a. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a

Federal program.

- b. The recipient remains responsible for the work that is subawarded, and therefore, the recipient must comply with the following:
 - (1) Subrecipient's responsibility: The recipient must determine that the subrecipient possesses the ability to perform successfully under the terms and conditions of a proposed award, taking into consideration the subrecipient's integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. The recipients must ensure subawards are made in compliance with the Standard Provision "Suspension and Debarment," and the Standard Provision "Preventing Transactions with, or the Provision of Resources or Support to, Sanctioned Groups and Individuals."
 - (2) Enter into a written subaward: All subawards must contain the following:
 - (i) Program description, budget, and period of performance,
 - (ii) Terms and conditions to define a sound and complete agreement,
 - (iii) All provisions from this award that contain a requirement to incorporate that provision into the subawards. The recipient must insert a statement in the subaward that, where appropriate, in instances where USAID is mentioned in such flow down provisions, the recipient's name will be substituted and where "recipient" appears, the subrecipient's name will be substituted.
 - (iv) Other terms that the recipient determines are required to ensure compliance with the terms of this award.
- c. Unless otherwise approved by the USAID Agreement Officer, the recipient must not provide funds to the governments of or entities controlled by the governments of countries ineligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

[END OF PROVISION]

RAA9. TRAVEL AND INTERNATIONAL AIR TRANSPORTATION (DECEMBER 2014)

APPLICABILITY: *This provision is applicable when costs for international travel or air transportation of cargo are anticipated to be funded by USAID. This provision is not applicable if the recipient is providing for international travel costs with private funds as part of a cost-sharing requirement or with Program Income generated under this award.*

TRAVEL AND INTERNATIONAL AIR TRANSPORTATION (DECEMBER 2014)

a. TRAVEL COSTS

All travel costs must comply with the applicable cost principles and must be consistent with those normally allowed in like circumstances in the recipient's non-USAID-funded activities. Costs incurred by employees and officers for travel, including air fare, costs of lodging, other subsistence, and incidental expenses, may be considered reasonable and allowable only to the extent such costs do not exceed reasonable charges normally allowed by the recipient in its regular operations as the result of the recipient organization's written travel policy and are within the limits established by the applicable cost principles.

In the absence of a reasonable written policy regarding international travel costs, the standard for determining the reasonableness of reimbursement for international travel costs will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current Standardized Regulations on international travel costs may be obtained from the AO. In the event that the cost for air fare exceeds the customary standard commercial airfare (coach or equivalent) or the lowest commercial discount airfare, the recipient must document one of the allowable exceptions from the applicable cost principles.

b. FLY AMERICA ACT RESTRICTIONS

- (1) The recipient must use U.S. Flag Air Carriers for all international air transportation (including personal effects) funded by this award pursuant to the Fly America Act and its implementing regulations to the extent service by such carriers is available.
- (2) In the event that the recipient selects a carrier other than a U.S. Flag Air Carrier for international air transportation, in order for the costs of such international air transportation to be allowable, the recipient must document such transportation in accordance with this provision and maintain such documentation pursuant to the Standard Provision, "Accounting, Audit and Records." The documentation must use one of the following reasons or other exception under the Fly America Act:
 - (i) The recipient uses a European Union (EU) flag air carrier, which is an airline operating from an EU country that has signed the US-EU "Open Skies" agreement (<http://www.state.gov/e/eb/rls/othr/ata/i/ic/170684.htm>).

- (ii) Travel to or from one of the following countries on an airline of that country when no city pair fare is in effect for that leg (see <http://apps.fas.gsa.gov/citypairs/search/>):
 - a. Australia on an Australian airline,
 - b. Switzerland on a Swiss airline, or
 - c. Japan on a Japanese airline;
- (iii) Only for a particular leg of a route on which no US Flag Air Carrier provides service on that route;
- (iv) For a trip of 3 hours or less, the use of a US Flag Air Carrier at least doubles the travel time;
- (v) If the US Flag Air Carrier offers direct service, use of the US Flag Air Carrier would increase the travel time by more than 24 hours; or
- (vi) If the US Flag Air Carrier does not offer direct service,
 - a. Use of the US Flag Air Carrier increases the number of aircraft changes by 2 or more,
 - b. Use of the US Flag Air Carrier extends travel time by 6 hours or more, or
 - c. Use of the US Flag Air Carrier requires a layover at an overseas interchange of 4 hours or more.

c. DEFINITIONS

The terms used in this provision have the following meanings:

- (1) "Travel costs" means expenses for transportation, lodging, subsistence (meals and incidentals), and related expenses incurred by employees who are on travel status on official business of the recipient for any travel outside the country in which the organization is located. "Travel costs" do not include expenses incurred by employees who are not on official business of the recipient, such as rest and recuperation (R&R) travel offered as part of an employee's benefits package that are consistent with the recipient's personnel and travel policies and procedures.
- (2) "International air transportation" means international air travel by individuals (and their personal effects) or transportation of cargo by air between a place in the United States and a place outside thereof, or between two places both of which are outside the United States.

- (3) "U.S. Flag Air Carrier" means an air carrier on the list issued by the U.S. Department of Transportation at <http://ostpxweb.dot.gov/aviation/certific/certlist.htm>. U.S. Flag Air Carrier service also includes service provided under a code share agreement with another air carrier when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.
- (4) For this provision, the term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

d. SUBAWARDS AND CONTRACTS

This provision must be included in all subawards and contracts under which this award will finance international air transportation.

[END OF PROVISION]

RAA10. OCEAN SHIPMENT OF GOODS (JUNE 2012)

APPLICABILITY: *This provision is applicable for awards and subawards for which the recipient contracts for ocean transportation for goods purchased or financed with USAID funds. In accordance with 22 CFR 228.21, ocean transportation shipments are subject to the provisions of 46 CFR Part 381.*

OCEAN SHIPMENT OF GOODS (JUNE 2012)

- a. Prior to contracting for ocean transportation to ship goods purchased or financed with USAID funds under this award, the recipient must contact the office below to determine the flag and class of vessel to be used for shipment:

U.S. Agency for International Development,
Bureau for Management
Office of Acquisition and Assistance, Transportation Division
1300 Pennsylvania Avenue, NW
Washington, DC 20523-7900
[Email: oceantransportation@usaid.gov](mailto:oceantransportation@usaid.gov)

- b. This provision must be included in all subagreements, including subawards and contracts.

[END OF PROVISION]

RAA11. REPORTING HOST GOVERNMENT TAXES (JUNE 2012)

APPLICABILITY: *This provision is applicable to all USAID agreements that obligate or subobligate FY 2003 or later funds except for agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds, or agreements where there will be no commodity transactions in a foreign country over the amount of \$500. Please insert address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under section (b) of this provision.*

REPORTING HOST GOVERNMENT TAXES (JUNE 2012)

- a. By April 16 of each year, the recipient must submit a report containing:
 - (i) Contractor/recipient name.
 - (ii) Contact name with phone, fax and e-mail.
 - (iii) Agreement number(s).
 - (iv) The total amount of value-added taxes and customs duties (but not sales taxes) assessed by the host government (or any entity thereof) on purchases in excess of \$500 per transaction of supplies, materials, goods or equipment, during the 12 months ending on the preceding September 30, using funds provided under this contract/agreement.
 - (v) Any reimbursements received by April 1 of the current year on value-added taxes and customs duties reported in (iv).
 - (vi) Reports are required even if the recipient did not pay any taxes or receive any reimbursements during the reporting period.
 - (vii) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.
- b. Submit the reports to: [insert address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate, may include an optional “with a copy to”].
- c. Host government taxes are not allowable where the Agreement Officer provides the necessary means to the recipient to obtain an exemption or refund of such taxes, and the recipient fails to take reasonable steps to obtain such exemption or refund. Otherwise, taxes are allowable in accordance with the Standard Provision, “Allowable Costs,” and must be reported as required in this provision.
- d. The recipient must include this reporting requirement in all applicable subagreements, including subawards and contracts.

[END OF PROVISION]

RAA12. PATENT RIGHTS (JUNE 2012)

APPLICABILITY: This provision is applicable to awards to small business firms or nonprofit organizations for the performance of experimental, developmental, or research work funded in whole or in part with USAID funds.

PATENT RIGHTS (JUNE 2012)**a. Patent Rights**

- (1) Allocation of Principal Patent Rights. The recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision. With respect to any subject invention in which the recipient retains title, the U.S. Government must have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. Government the subject invention throughout the world, and to sublicense others to do the same. The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with U.S. Government support under (identify the agreement awarded by USAID). The U.S. Government has certain rights in this invention."
- (2) Definitions. For purposes of this provision, the following terms will have the following meaning:
 - (i) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
 - (ii) "Subject invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this award.
- (3) The recipient must disclose each subject invention to the National Institutes of Health (NIH) EDISON Patent Reporting and Tracking System (<http://www.iedison.gov>) within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. In addition, the recipient agrees to submit, on request, periodic reports to the Agreement Officer's Representative, no more frequently than annually, on the utilization of a subject invention.

- (4) Conditions When the U.S. Government May Obtain Title. The recipient must convey title to any subject invention to USAID, upon written request, subject to recipient's retention of a nonexclusive, royalty-free license throughout the world, in each subject invention:
- (i) If the recipient fails to file a U.S. patent application or to disclose the subject invention to USAID at least 60 days prior to the statutory period for filing a patent in the United States, fails to file any non-U.S. patent applications within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, or elects not to retain title.
 - (ii) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.
- b. Subawards and Contracts: Recipient must include this the Standard Provision, suitably modified to identify the parties, in all subawards and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The recipient must retain all rights provided for the USG in this the Standard Provision, and the recipient must not, as part of the consideration for awarding the contract or subaward, obtain more rights in the contractor's or subrecipient's subject inventions than provided in this provision.

[END OF PROVISION]

RAA13. EXCHANGE VISITORS AND PARTICIPANT TRAINING (JUNE 2012)

APPLICABILITY:

This provision applies to awards that contain funding for any exchange visitor activities or participant training, as defined in [ADS 252](#) and [253](#), respectively, conducted or paid for by the recipient with USAID funds under this award.

EXCHANGE VISITORS AND PARTICIPANT TRAINING (JUNE 2012)

For any Exchange Visitor, Participant Training or Invitational Travel activities, the recipient must comply with this provision.

a. **Definitions:**

- (1) An **Exchange Visitor** is any host-country or third-country national traveling to the U.S., for any purpose, including Participant Training and Invitational Travel, funded by USAID in whole or in part, directly or indirectly.
- (2) A **Participant** is a host-country or third-country national sponsored by USAID for a Participant Training activity taking place in the U.S., a third country, or in the host country.
- (3) **Participant Training** is a learning activity conducted within the U.S., a third country, or in the host country for the purpose of furthering USAID development objectives. A learning activity takes place in a setting in which an individual (the Participant) interacts with a knowledgeable professional, predominantly for the purpose of acquiring knowledge or skills for the professional or technical enhancement of the individual. Learning activities may be formally structured, such as an academic program or a technical course, or they may be more informal, such as an observational study tour.
- (4) **Invitational Travel** is a type of travel that USAID funds for non-U.S. Government employees. This type of travel may be approved for both U.S. and foreign citizens who are not employed by the U.S. Government (USG), not receiving any type of compensation from the USG for such travel, and only when it is determined that the functions to be performed are essential to the interests of USAID.

b. **Program Monitoring and Data Reporting:** The recipient must monitor Exchange Visitors' and Participants' progress during their program and ensure that problems are identified and resolved quickly.

- (1) For U.S.-based activities, the recipient must use USAID's official Exchange Visitor and Participant Training information system, currently called "Training Results and Information Network – TraiNet" (see <http://trainethelp.usaid.gov/>), to report and manage Exchange Visitor and Participant Training data. The recipient must also use the USAID Visa Compliance System – VCS (see <http://trainethelp.usaid.gov/>) to transfer required data for USAID Exchange Visitors to the Department of Homeland Security's Student and Exchange Visitor Information System (SEVIS).
- (2) For all third-country activities, and for host-country activities of two consecutive days or 16 contact hours or more in duration, the recipient must use USAID's official Exchange Visitor and Participant Training information system, currently called "Training Results and Information Network – TraiNet" (see <http://trainethelp.usaid.gov/>), to report and manage Participant Training data.

c. **Health and Accident Insurance:**

- (1) For Exchange Visitors traveling to the United States, the recipient must enroll Exchange Visitors in health and accident insurance coverage that meets or exceeds Department of State and USAID minimum coverage requirements as set forth in 22 CFR 62.14 and ADS 253.3.6.2. The requirements may be obtained from the Agreement Officer's Representative.
- (2) For Participants traveling to a third country, the recipient must obtain health and accident insurance coverage for all Participants.
- (3) For Participants traveling within the host country, the recipient must determine whether specific in-country participant training activities subject them to any risk of health and accident liability for medical costs. Participants may incur, and if so, take appropriate steps according to the local situation, including obtaining health and accident insurance coverage for Participants.

d. **Immigration Requirements:**

- (1) For Exchange Visitors traveling to the United States, the recipient must ensure that all USAID-sponsored Exchange Visitors obtain, use, and comply with the terms of the J-1 visa, issued in conjunction with a USAID-issued Certificate of Eligibility for J-1 Visa Status (DS-2019).
- (2) For Participants traveling to a third country or within the host country, the recipient must ensure that all Participants obtain, use, and comply with the terms of all applicable immigration, visa and other similar requirements.

- e. **Language Proficiency:** The recipient must verify language proficiency. Exchange Visitors must possess sufficient English language proficiency to participate in a U.S.-based activity. Participants of third-country or host-country training must be proficient in the language of training at a sufficient level for participation, unless an interpreter has been arranged. Language competency can be verified through a variety of means including proficiency assessments of interviews, publications, presentations, education conducted in English, and formal testing.

- f. **Pre-departure Orientation:** The recipient must conduct pre-departure orientation for U.S.-bound Exchange Visitors and Participants of third-country training programs. Pre-departure orientation covers: program objectives; administrative and policy review; cultural aspects; and training/learning methods.

- g. **Conditions of Sponsorship:** The recipient must ensure that all Exchange Visitors read and sign the Conditions of Sponsorship for U.S.-Based Activities form (AID 1381-6). The recipient must also ensure that all Participants of long-term (six months or longer) third-country training read and sign the form

Conditions of Sponsorship for Third-Country Training form (AID 1381-7). The recipient must report to the Agreement Officer any known violations by Exchange Visitors of visa or other immigration requirements or conditions.

- h. **Exchange Visitor Security Risk and Fraud Inquiry:** Each USAID Mission has an established process for conducting a Security Risk and Fraud Inquiry (SRFI) for Exchange Visitors. The recipient must be prepared to assist Missions in conducting the SRFI, if requested. However, the recipient's role is contributive, and the Mission is ultimately responsible for conducting the SRFI.
- i. **Fly America:** To the extent that participants travel by international air travel, the recipient must comply with the Standard Provision, "International Air Travel and Air Transportation of Property."
- j. **Use of Minority Serving Institutions:** For U.S.-based Participant Training, the recipient must, to the maximum extent possible, maintain their use of Historically Black Colleges and Universities (HBCUs) and other Minority Serving Institutions (MSIs), including Hispanic Serving Institutions and Tribal Colleges and Universities, as training or education providers.

[END OF PROVISION]

RAA14. INVESTMENT PROMOTION (NOVEMBER 2003)

APPLICABILITY: *The following provision is required for grants and cooperative agreements when the program includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in [ADS 225](#) (see 225.3.)*

INVESTMENT PROMOTION (NOVEMBER 2003)

- a. Except as specifically set forth in this award or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.
- b. In the event the recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The recipient must not proceed with the activity until advised by USAID that it may do so.
- c. The recipient must ensure that its employees and subrecipients and contractors providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all contracts

and other subawards entered into hereunder.

[END OF PROVISION]

RAA15. COST SHARE (JUNE 2012)

APPLICABILITY: *This provision is applicable when the recipient provides a Cost Share.*

COST SHARE (JUNE 2012)

- a. During the period of this award, the recipient agrees to spend an amount of funds from non-U.S. Government sources specified as Cost Share, as provided in the award budget. Any Cost Share restrictions contained in this award take precedence over the terms of this provision.
- b. The recipient's Cost Share under this award may include project costs incurred by the recipient from its own funds, or project costs financed with cash, services, or property contributed or donated to the recipient from other non-U.S. Government sources, including subrecipients. Not all Cost Share requires cash outlays by the recipient; examples are depreciation and use charges for buildings and equipment.
- c. The recipient's Cost Share contributions, both cash and in-kind, must meet all of the following criteria:
 - (1) Are verifiable from the recipient's records;
 - (2) Are not included as cost share contributions for any other U.S. Government (USG) -assisted program;
 - (3) Are necessary and reasonable for proper and efficient accomplishment of this award's objectives;
 - (4) Are allowable under the Standard Provision, "Allowable Costs";
 - (5) Are not paid by the USG under another grant or agreement (unless the grant or agreement is authorized to be used for Cost Share); and
 - (6) Are included in the approved budget.
- d. The source, nationality, and restricted goods requirements in the Standard Provision "USAID Eligibility Rules for Procurement of Commodities and Services" do not apply to cost share expenditures.
- e. The value of non-U.S. Government in-kind contributions applied to Cost Share is established by the following procedures:
 - (1) Volunteer services must be an integral and necessary part of an approved program. Rates for volunteers must be consistent with those paid for similar work in the recipient's organization, or consistent with those paid

for similar work in the labor market in which the recipient competes. Volunteer services furnished by others must be valued at the employee's regular rate of pay, exclusive of overhead costs, provided these services are of the same skill for which the employee is normally paid. In any case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

- (2) The assessed value of donated supplies and equipment must be reasonable and must not exceed the fair market value of the property at the time of the donation.
- (3) The value of donated property must be determined in accordance with the usual accounting policies of the recipient with the following qualifications:
 - (i) If the purpose of this award is to assist the recipient in the acquisition of equipment, buildings, or land, the total value of the donated property may be claimed as Cost Share.
 - (ii) If the purpose of this award is to support activities that require the use of equipment, buildings, or land, normally only depreciation or use charges for equipment and buildings may be made. However, the Agreement Officer (AO) may approve the charge of the full value of equipment or other capital assets and fair rental charges for land.
 - iii) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser.
 - (iv) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.
 - (v) The value of donated space must not exceed the fair rental value of comparable space and facilities in a privately owned building in the same locality, as determined by adequate market research.
 - (vi) The value of loaned equipment must not exceed its fair rental value.
- f. The recipient must provide supporting records for in-kind contributions from third parties.
 - (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
 - (2) The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.
- g. If the recipient expends less than the agreed upon Cost Share as specified in this award, the AO may apply the difference to reduce the amount of USAID funding for the following funding period, require the recipient to refund the difference to

USAID when this award expires or is terminated, or reduce the amount of cost share required under the award.

- h. In the event of any disallowance of expenditures from USAID award funds, the recipient may substitute expenditures made with funds provided from non-U.S. Government sources, provided they are eligible in accordance with all the Standard Provisions of this award.

[END OF PROVISION]

RAA16. PROGRAM INCOME (AUGUST 2020)

APPLICABILITY: *This provision is applicable when program income is expected to be earned under this award. The AO must specify in the schedule of the award the approach for use of program income (for example, deduction, addition, or cost-sharing) (see [2 CFR 200.307](#) and [ADS 303.3.10.4](#)).*

PROGRAM INCOME (August 2020)

a. Program income is gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Program income includes, but is not limited to: income from fees for services performed; the use or rental of real or personal property acquired under Federal awards; the sale of commodities or items fabricated under a Federal award; license fees and royalties on patents and copyrights; and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, or interest earned on any of them.

b. Program income must be used for the purposes, and under the conditions of, the award, to further project objectives, program objectives, or award activities. Program income must be used only for allowable program costs. Interest earned on program income is subject to the same conditions as program income.

c. The recipient must apply the approach for use of program income as specified in the schedule of the award. This may include one of the three approaches listed below (see also [2 CFR 200.307](#)). The recipient must also follow the standards in this provision to account for gross income earned from Federally-supported activities under this award.

- 1) If the deduction approach is used, the recipient must use the program income for current costs, prior to drawdown of USAID funds under the award.
- 2) If the addition approach is used, the total award amount is increased by the amount of program income. If the award anticipates a specific program income

amount, any program income in excess of such amount must be deducted from expenditures.

- 3) If the cost sharing approach is used, the amount of the award remains the same. If the award anticipates a specific program income amount, any program income in excess of such amount must be deducted from expenditures.

d. Costs subject to generating program income under this award may be deducted from gross income to calculate program income, provided these costs have not been charged to this award and comply with the standard provision, "Allowable Costs."

e. The recipient must report program income using the [Federal Financial Report, SF-425](#). Program income must be accounted for in the same ratio as USAID's participation in the program. For example, if USAID funded 75 percent of a recipient's program, then the recipient must report 75 percent of any program income earned under the award as "Federal program income earned" on the SF-425.

f. The recipient should continue to use program income earned after the period of the award to further award objectives, but is not subject to Federal requirements governing the disposition of program income earned after the end of the period of performance for the award.

[END OF PROVISION]

RAA17. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JUNE 2012)

APPLICABILITY: *Include this provision in agreements funded from the following accounts:*

- *Development Assistance, including assistance for sub-Saharan Africa,*
- *Global Health Programs, and*
- *Micro and Small Enterprise Development Program Account.*

Further information found in the Mandatory Reference for ADS 303, "Guidance on Funding Foreign Government Delegations to International Conferences," (<http://www.usaid.gov/ads/policy/300/350maa>).

FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JUNE 2012)

- a. U.S. Government funds under this award must not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a multilateral organization, as defined below, unless approved by the Agreement Officer in writing.
- b. Definitions:
 - (1) A foreign government delegation is appointed by the national government (including ministries and agencies but excluding local, state and provincial entities) to act on behalf of the appointing authority at the international conference. A conference participant is a delegate for the purposes of this provision, only when there is an appointment or designation that the individual is authorized to officially represent the government or agency. A delegate may be a private citizen.
 - (2) An international conference is a meeting where there is an agenda, an organizational structure, and delegations from countries other than the conference location, in which country delegations participate through discussion, votes, etc.
 - (3) A multilateral organization is an organization established by international agreement and whose governing body is composed principally of foreign governments or other multilateral organizations.

[END OF PROVISION]

RAA18. STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)

APPLICABILITY: *This provision must be included in Request for Applications (RFAs) and in awards involving construction.*

STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)

- a. One of the objectives of the USAID Disability Policy is to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations, and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs).

- b. USAID requires the recipient to comply with standards of accessibility for people with disabilities in all structures, buildings or facilities resulting from new or renovation construction or alterations of an existing structure.
- c. The recipient will comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA will be used.
- d. New Construction. All new construction will comply with the above standards for accessibility.
- e. Alterations. Changes to an existing structure that affect, the usability of the structure will comply with the above standards for accessibility unless the recipient obtains the Agreement Officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.
- f. Exceptions. The following construction related activities are excepted from the requirements of paragraphs a. through d. above:
 - (1) Normal maintenance, reroofing, painting or wall papering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply unless they affect the accessibility of the building or facility; and
 - (2) Emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as "most vulnerable."

[END OF PROVISION]

RAA19. PROTECTION OF HUMAN RESEARCH SUBJECTS (JUNE 2012)

APPLICABILITY: *This provision is applicable when human subjects are involved in research financed by this award, as defined in 22 CFR 225 and ADS 200 Mandatory Reference, “Protection of Human Subjects in Research Supported by USAID.” The AO should confer with the Activity Manager to determine if any research with human subjects will be included in the award.*

PROTECTION OF HUMAN RESEARCH SUBJECTS (JUNE 2012)

- a. The recipient is responsible for safeguarding the rights and welfare of human subjects involved in research under this award, and must comply with the Common Federal Policy for the Protection of Human Subjects as found in Part 225 of Title 22 of the Code of Federal Regulations (22 CFR 225).
- b. The recipient must assure USAID of its compliance with the requirements set forth in 22 CFR 225 by doing one of the following:
 - (1) Obtaining a Federal-Wide Assurance (FWA) from the U.S. Department of Health and Human Services. Instructions on obtaining an FWA can be found on the Office of Human Research Protection Web site <http://www.hhs.gov/ohrp/assurances/assurances/file/index.html>; or
 - (2) Submitting to the Agreement Officer's Representative (AOR) for USAID approval, a written assurance which includes a statement of principles governing the recipient's responsibilities, designation of one or more Institutional Review Board (IRB), a list of the IRB members, written procedures which the IRB will follow, and written procedures for ensuring prompt reporting of unanticipated problems to the IRB; or
 - (3) Submitting to the AOR for USAID approval, a justification memorandum asserting that research conducted outside the United States provides protections at least equivalent to those in 22 CFR 225.
- c. Definitions for the purposes of this award:
 - (1) Research means an activity designed to test a hypothesis, permit conclusions to be drawn, and thereby to develop or to contribute to generalizable knowledge.
 - (2) Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains
 - (i) Data through intervention or interaction with the individual, or

- (ii) Identifiable private information.
- (3) Intervention includes both physical procedures by which data are gathered and the changes to the subject or the subject's environment performed for research purposes.
- (2) Institutional Review Board means a properly constituted ethical committee which will review the research.
- d. USAID staff and consultants may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, USAID may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the following statement:

“Subject’s research records may be independently reviewed by USAID staff and consultants to ensure compliance with USAID requirements for protection of human research subjects.”

[END OF PROVISION]

RAA20. STATEMENT FOR IMPLEMENTERS OF ANTI-TRAFFICKING ACTIVITIES ON LACK OF SUPPORT FOR PROSTITUTION (JUNE 2012)

Applicability: *This provision must be included in any award that*

- (1) uses funds made available to carry out the Trafficking Victims Protection Act of 2000, Division A of P.L. 106-386; and*
- (2) covers a program that targets victims of severe forms of trafficking in persons (as defined below) and provides services to individuals while they are still engaged in activities that resulted from such victims being trafficked.*

“Severe forms of trafficking in persons” means

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or*
- (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

STATEMENT FOR IMPLEMENTERS OF ANTI-TRAFFICKING ACTIVITIES ON LACK OF SUPPORT FOR PROSTITUTION (JUNE 2012)

By accepting this award, the recipient hereby states that it does not promote, support, or advocate the legalization or practice of prostitution. This statement may be true by virtue of the organization's lack of any policy regarding the issue.

[END OF PROVISION]

RAA21. ELIGIBILITY OF SUBRECIPIENTS OF ANTI-TRAFFICKING FUNDS (JUNE 2012)

APPLICABILITY: *This provision must be included in any award that uses funds made available to carry out the Trafficking Victims Protection Act of 2000, Division A of P.L. 106-386, for a program that targets victims of severe forms of trafficking in persons. "Severe forms of trafficking in persons" means*

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or*
- (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

ELIGIBILITY OF SUBRECIPIENTS OF ANTI-TRAFFICKING FUNDS (JUNE 2012)

The recipient must not provide funds made available to carry out this award to any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. Such a statement is not required, however, if the sub-recipient organization provides services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked. If required, the sub-recipient organization's statement may be true by virtue of the organization's lack of any policy regarding the issue.

[END OF PROVISION]

RAA22. PROHIBITION ON THE USE OF ANTI-TRAFFICKING FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE

LEGALIZATION OR PRACTICE OF PROSTITUTION (JUNE 2012)

APPLICABILITY: *This provision must be included in any award that uses funds made available specifically under the Trafficking Victims Protection Act of 2000, Division A of P.L. 106-386.*

PROHIBITION ON THE USE OF ANTI-TRAFFICKING FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION (JUNE 2012)

None of the funds made available under this award may be used to promote, support, or advocate the legalization or practice of prostitution. However, this prohibition does not preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted in such victims being trafficked. The recipient must insert this provision in all subagreements under this award.

[END OF PROVISION]

RAA23. VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

APPLICABILITY: *This provision is applicable to all awards involving any aspect of voluntary population planning activities.*

VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

a. Voluntary Participation and Family Planning Methods:

- (1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health, and welfare of all individuals who take part in the program.
- (2) Activities which provide family planning services or information to individuals, financed, in whole or in part, under this award, must provide a broad range of family planning methods and services available in the country in which the activity is conducted or must provide information to such individuals regarding where such methods and services may be obtained.

b. Requirements for Voluntary Family Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental or nongovernmental organization or Public International Organization (PIO) provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project must not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project must not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor, or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) A person must not be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project must provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and

health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

- (7) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided must agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
- (9)
 - i) The recipient must notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs b.(3), b.(4), b.(5), or b.(7).
 - ii) The recipient must investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph b.(6) and must notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.
 - iii) The recipient must provide USAID such additional information about violations as USAID may request.

c. Additional Requirements for Voluntary Sterilization Programs

- (1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.
- (2) The recipient must ensure that any surgical sterilization procedures supported, in whole or in part, by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent any time prior to the operation. An individual's consent is considered voluntary if it is based

upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

- (3) Further, the recipient must document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation must be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who speaks the same language as the patient.
- (4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization for a period of three years after performance of the sterilization procedure.

d. Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate," as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.
 - (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.
- e. The recipient must insert this provision in all subsequent subagreements, including subawards and contracts, involving family planning or population activities that will be supported, in whole or in part, from funds under this award.

[END OF PROVISION]

RAA24. CONSCIENCE CLAUSE IMPLEMENTATION (ASSISTANCE) (FEBRUARY 2012)

APPLICABILITY: *This provision must be included in any new assistance award or amendment to an existing award (if not already incorporated into the agreement) obligating FY04 or later funds made available for HIV/AIDS activities, regardless of the program account. Further guidance is found in AAPD 14-04, Section 2.D.*

CONSCIENCE CLAUSE IMPLEMENTATION (ASSISTANCE) (FEBRUARY 2012)

An organization, including a faith-based organization, that is otherwise eligible to receive funds under this agreement for HIV/AIDS prevention, treatment, or care—

- (a) Shall not be required, as a condition of receiving such assistance—
 - (1) To endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or
 - (2) 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; and
- (b) Shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements for refusing to meet any requirement described in paragraph (a) above.

[END OF PROVISION]

RAA25. CONDOMS (ASSISTANCE) (SEPTEMBER 2014)

APPLICABILITY: *This provision must be included in any new Request for Applications (RFA) or Annual Program Statement (APS), and any new assistance award or amendment to an existing award obligating or intending to obligate (in the case of solicitations) FY04 or later funds made available for HIV/AIDS activities, regardless of the program account.*

CONDOMS (ASSISTANCE) (SEPTEMBER 2014)

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public

health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled "USAID HIV/STI Prevention and Condoms". This fact sheet may be accessed at:

<http://www.usaid.gov/sites/default/files/documents/1864/CondomSTIIssueBrief.pdf>.

The prime recipient must flow this provision down in all subawards, procurement contracts, or subcontracts for HIV/AIDS activities.

[END OF PROVISION]

RAA26. PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING(ASSISTANCE) (SEPTEMBER 2014)

APPLICABILITY: *This provision must be included in any new Request for Applications (RFA) or Annual Program Statement (APS), and any new assistance award or amendment to an existing award obligating or intending to obligate (in the case of solicitations) FY04 or later funds made available for HIV/AIDS activities, regardless of the program account. Further guidance is found in AAPD 14-04, Section 2.E.*

PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (ASSISTANCE) (SEPTEMBER 2014)

- (a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- (b)(1) Except as provided in (b)(2), by accepting this award or any subaward, a non-governmental organization or public international organization awardee/subawardee agrees that it is opposed to the practices of prostitution and sex trafficking.
- (b)(2) The following organizations are exempt from (b)(1):
 - (i) the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

- (ii) U.S. non-governmental organization recipients/subrecipients and contractors/subcontractors.
 - (iii) Non-U.S. contractors and subcontractors if the contract or subcontract is for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding.
- (b)(3) Notwithstanding section (b)(2)(iii), not exempt from (b)(1) are non-U.S. recipients, subrecipients, contractors, and subcontractors that implement HIV/AIDS programs under this assistance award, any subaward, or procurement contract or subcontract by:
 - (i) Providing supplies or services directly to the final populations receiving such supplies or services in host countries;
 - (ii) Providing technical assistance and training directly to host country individuals or entities on the provision of supplies or services to the final populations receiving such supplies and services; or
 - (iii) Providing the types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (i) and (ii), or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory services approving financial transactions, personnel actions).
- (c) The following definitions apply for purposes of this provision:

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Prostitution” means procuring or providing any commercial sex act and the “practice of prostitution” has the same meaning.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).
- (d) The recipient must insert this provision, which is a standard provision, in all subawards, procurement contracts or subcontracts for HIV/AIDS activities.
- (e) This provision includes express terms and conditions of the award and any violation of it shall be grounds for unilateral termination of the award by USAID prior to the end of its term.

[END OF PROVISION]

RAA27. LIMITATION ON SUBAWARDS TO NON-LOCAL ENTITIES (JULY 2014)

(For use in all solicitations and resulting awards where competition is limited to local entities. This provision must be used for all awards financed fully or in part with FY14 funds. Please refer to ADS 303, section 303.3.6.6 a.(2), “Other Exceptions to Competition – Local Competition” for additional guidance.)

LIMITATION ON SUBAWARDS TO NON-LOCAL ENTITIES (JULY 2014)

(a) By submission of an application and execution of the award, the applicant/recipient agrees that at least fifty (50) percent of the cost of award performance incurred for personnel must be expended for employees of the prime/local entity.

(b) By submission of an application and execution of the award, the Applicant/Recipient represents that it is an individual, a corporation, a nonprofit organization, or another body of persons that:

- (1) Is legally organized under the laws of;
- (2) Has as its principal place of business or operations in;
- (3) Is majority owned by individuals who are citizens or lawful permanent residents of; and
- (4) Is managed by a governing body the majority of who are citizens or lawful permanent residents of the country in which this award will be primarily performed.

(d) For purposes of this provision, “majority owned” and “managed by” include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.

[END OF PROVISION]

RAA28. CONTRACT PROVISION FOR DBA INSURANCE UNDER RECIPIENT PROCUREMENTS (DECEMBER 2014)

APPLICABILITY: The following provision is required when the recipient is expected to procure services to be performed overseas.

DEFENSE BASE ACT (DBA) WORKERS' COMPENSATION INSURANCE FOR PROCUREMENT CONTRACT (DECEMBER 2014)

All contracts made by the recipient under this award for services to be performed overseas must contain the following provision, as applicable.

WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)

(a) The Contractor must--

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing Defense Base Act (DBA) insurance pursuant to the terms of the contract between USAID and USAID's DBA insurance carrier unless the Contractor qualifies as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.), or has an approved retrospective rating agreement for DBA. The Contractor must continue to maintain these provisions to provide such Defense Base Act benefits until contract performance is completed.

(2) If USAID or the Contractor has secured a waiver of DBA coverage in accordance with AIDAR 728.305-70(a) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to USAID-financed contracts performed in countries listed in the DEFENSE BASE ACT (DBA) WAIVER LIST.

(3) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203).

(4) Pay all compensation due for disability or death within the timeframes required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232).

(5) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419).

(6) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251).

(7) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234).

(8) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914 (c) and (g), 20 CFR 702.234 and 702.235).

(9) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lbdba.htm>.

The Contractor must insert the substance of this clause including this paragraph (c), in all subcontracts to which the Defense Base Act applies.

[END OF PROVISION]

RAA29. CONTRACT AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (April 2016)

APPLICABILITY: *This provision must be incorporated into awards if the total federal share of the award may include more than \$500,000 over the period of performance.*

AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APRIL 2016)

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and

Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not

need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[END OF PROVISION]

RAA30. PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE (MAY 2019)

APPLICABILITY: This provision is applicable to those awards using federal funding predictably for international health activities with a primary purpose or effect of benefitting a foreign country, typically funded from the GHP, ESF, AEECA, or successor accounts, as applicable, including awards reported on under the Health category of the Foreign Assistance Standardized Program Structure, except those under program area HL.8, Water Supply and Sanitation, the American Schools and Hospitals Abroad Program, or programs funded by Food for Peace. This provision applies whenever implementation of the activity involves assistance to or implemented by foreign non-governmental organizations.

PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE (May 2019)

(a) Ineligibility of Foreign Non-governmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning

This provision is in two parts: I, applicable to foreign non-governmental organizations; and II, applicable to U.S. non-governmental organizations. Both part I and part II should be included in awards.

I. Grants and Cooperative Agreements with Foreign Non-governmental Organizations

- (1) The recipient agrees that it will not, during the term of this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to any other foreign non-governmental organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.
- (2) The recipient agrees that authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the health activities of the recipient, including reports, brochures and service statistics; (ii) observe the health activities conducted by the recipient, (iii) consult with healthcare personnel of the recipient; and (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable.
- (3) In the event USAID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient must make available

to USAID such books and records and other information as USAID may reasonably request to determine whether a violation of that undertaking has occurred, consistent with 2 CFR Part 200.

- (4) Health assistance furnished to the recipient under this award must be terminated if the recipient violates any undertaking required by this paragraph (a), unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the recipient must refund to USAID any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award. The amount to be refunded to USAID under this subparagraph (4) may not exceed the total amount of health assistance furnished under this award.
- (5) The recipient may not furnish health assistance under this award to another foreign non-governmental organization (the sub-recipient) unless: (i) sub-recipient agrees, by entering into such subaward, that it will not, during the term of its subaward, perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and (ii) such foreign non-governmental organization's agreement contains the same terms and conditions as described in subparagraph (6), below.
- (6) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization under this award, the recipient, consistent with 2 CFR Part 200, must ensure that such agreement with sub-recipient includes the following terms:
 - (i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign non-governmental organizations that conduct such activities;
 - (ii) The recipient and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;
 - (iii) In the event that the recipient or USAID has reasonable cause to

believe that a sub-recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR Part 200;

- (iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms under subparagraphs (6)(i)-(iii), above, unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award. Where USAID is not otherwise engaged in the determination to terminate a sub-recipient's award, the recipient must notify USAID of any action taken for a violation of any undertaking required under subparagraphs (6)(i)-(iii); and
- (v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not, during the term of its subaward, perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by the sub-recipient to the recipient as described in subparagraphs (6)(i)-(iv), above.
- (7) Where the terms and conditions of the award require USAID approval of subawards, the recipient must, consistent with 2 CFR Part 200, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing health assistance under this award.
- (8) The recipient is liable to USAID for a refund for a violation by the sub-recipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family

planning, or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (6)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient, or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (6)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (6)(i)-(iii), above, or fails to take other appropriate corrective action consistent with subparagraph 6(iv), above.

- (9) Recipient acknowledges that USAID may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it performs or actively promotes abortion as a method of family planning.
- (10) The following definitions apply for purposes of paragraph (a):
 - (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.
 - (ii) “To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
 - (iii) “To actively promote abortion” means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following activities:

- (I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;
- (II) Providing advice that abortion as a method of family planning is an available option or encouraging women to

consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.

(iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of U.S. global health assistance funds made available under this award or goods financed with such funds. Furnishing health assistance to a foreign non-governmental organization does not include the provision of technical assistance or training (including other costs for individuals directly related to such technical assistance or participation in training), unless such organization receives a subaward of U.S. global health assistance funds under this award. Furnishing health assistance to a foreign non-governmental organization does not include the purchase of

goods or services from an organization.

(v) To “control” an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.

- (11) In determining whether a foreign non-governmental organization is eligible to be a recipient or sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the recipient or sub-recipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate non-governmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer’s approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.
- (12) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.
- (13) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

II. Grants and Cooperative Agreements with U.S. Non-governmental Organizations

- (1) The recipient (A) agrees that it will not furnish health assistance under this award to any foreign non-governmental organization that performs or actively promotes abortion as a method of family planning in foreign countries; and (B) further agrees to require that such sub-recipients do not provide financial support to any other foreign non-governmental

organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

- (2) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization (sub-recipient) under this award, recipient must ensure that such agreement with sub-recipient includes the following terms:
 - (i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign non-governmental organizations that conduct such activities;
 - (ii) The recipient, and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe the health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;
 - (iii) In the event that the recipient or USAID has reasonable cause to believe that a sub-recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR part 200;
 - (iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms required by subparagraphs (2)(i)-(iii), above, unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform

or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award. Where USAID is not otherwise engaged in the determination to terminate a recipient's subaward, the recipient must notify USAID of any action taken for a violation of any undertaking required under subparagraphs (2)(i)-(iii); and

- (v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not, during the term of its subaward, perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by the sub-recipient to the recipient as described in subparagraphs (2)(i)-(iv), above.
- (3) Where the terms and conditions of the award require USAID approval of subawards, the recipient must, consistent with 2 CFR Part 200, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing health assistance under this award.
- (4) The recipient is liable to USAID for a refund for a violation by the sub-recipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family planning; or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (2)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (2)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (2)(i)-(iii), above, or fails to take other appropriate corrective action consistent with subparagraph 2(iv), above.
- (5) Recipient acknowledges that USAID may make independent inquiries in the community served by a sub-recipient under this award regarding whether such sub-recipient performs or actively promotes abortion as a method of family planning.

(6) The following definitions apply for purposes of this paragraph (a):

- (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.
- (ii) “To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
- (iii) “To actively promote abortion” means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following activities:

- (I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;
- (II) Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally);
- (III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and
- (IV) Conducting a public-information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

- (B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
- (C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.
- (iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of U.S. global health assistance funds made available under this award or goods financed with such funds. Furnishing health assistance to a foreign non-governmental organization does not include the provision of technical assistance or training (including other costs for individuals directly related to such technical assistance or participation in training), unless such organization receives a subaward of U.S. global health assistance funds under this award. Furnishing health assistance to a foreign non-governmental organization does not include the purchase of goods or services from an organization.
- (v) To "control" an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.
- (7) In determining whether a foreign non-governmental organization is eligible to be a sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the sub-recipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate non-governmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer's approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the

preceding sentence. The recipient must provide a written justification to USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

(8) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.

(9) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

(b) This provision shall be inserted *verbatim* in subawards in accordance with the terms of paragraph (a).

[END OF PROVISION]

[END OF THE STANDARD PROVISIONS]

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