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[Family Planning & USAID (United States Agency for International Development)]: [USAID Population Assistance FY (Fiscal Year) 2000] [1]

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- ② Circumvention Sp. h
- ③ Local laws
why?
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advocate
- ⑤ ~~Red Slag~~
• PBA domestic precedent
• Nepal, Latin Am. big issue
• Arrogance

don't offend



USAID FY 2000 Population Assistance Certification Form

USAID Mission or Prime Contractor/Grantee/Recipient		Certifying Organization	
Organization:		Organization:	
Contact Name:		Address:	
E-mail:			
Phone:		Country:	
Fax:		Phone:	Fax:

Please review Options 1 and 2 below and sign in the applicable signature block:

Option 1:

I, the undersigned, as a duly authorized representative of the above named certifying organization: expect to receive FY 2000 population funds appropriated by Public Law 106-113; have reviewed USAID's Guidance for FY 2000 Population Assistance Certification, dated January 2000; and do hereby certify that my organization will not, either with USAID or non-USAID funds

- 1) perform abortions in the country named above or any other foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest;
- 2) violate the laws of the country named above or any other foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited; or
- 3) engage in activities or efforts to alter the laws or governmental policies concerning circumstances under which abortion is permitted, regulated, or prohibited;

from the date my organization signs an agreement to receive funding derived from USAID's FY 2000 population assistance account through September 30, 2001.

This certification does not restrict the organization's (1) treatment of injuries or illnesses caused by legal or illegal abortion or (2) activities which are in opposition to coercive abortion or involuntary sterilization.

This certification constitutes a material representation of fact upon which reliance is placed by USAID or its intermediary contractors, grantees, and recipients when entering into financing agreements.

Signature

Block 1:

Printed Name

Signature

Title

Date

Option 2:

My organization, named above, is not prepared at this time to certify to the conditions outlined in Option No. 1 above.

Signature

Block 2:

Printed Name

Signature

Title

Date

Public reporting burden for this collection of information is expected to vary by respondent. However, most respondents are expected to require approximately 4 person hours, on average, to review the guidance and complete and submit the required form. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Population, Center for Population, Health and Nutrition, U.S. Agency for International Development, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523-3600.

USAID DRAFT DOCUMENT -- Internal Government Use Only -- January 10, 2000**USAID Policy Notice**

Subject: Implementation of FY 2000 Population
Certification Requirements

Section 599D of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), prohibits USAID from providing FY 2000 population funds appropriated under the statute to non-U.S., non-governmental organizations, whether non-profit or profit-making, and multilateral organizations (hereafter, for convenience, called "covered organizations"), unless they certify that they will not engage in specified abortion-related activities during the period the funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees and to activities conducted by such organizations with either USAID or non-USAID funding. The certification requirement does not apply to U.S. entities, foreign governments and certain others.

Although the President has exercised statutory authority to waive this requirement, only a limited amount of population funding may be provided under the law—a total of \$15 million for population activities worldwide—to covered organizations that do not certify. Covered organizations that do not certify may receive USAID funding only to the extent it is available within the limited \$15 million cap.

To implement the law, USAID is requiring all covered prime awardees (under contracts, grants or cooperative agreements) to complete a certification form, prior to receiving FY 2000 population funds. The form will indicate whether the prime certifies or declines to certify. In addition, USAID will require all prime awardees receiving FY 2000 population funds, both U.S. and non-U.S., to collect certification forms from their covered subawardees at all levels below the prime award. USAID/G/PHN must specifically approve the level of FY 2000 population funding for non-certifying organizations through prime or sub-award instruments. The FY 2000 Population Assistance Certification Form and Guidance for FY 2000 Population Assistance Certification are Attachments 1 and 2 to this notice. For U.S. entities, foreign governments and covered

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organizations that certify, obligations may proceed without regard for the \$15 million cap.

Population, Health and Nutrition (PHN) staff in Washington and in field missions will be responsible for collecting certification forms from prime awardees and recipients and, through the primes, from their subawardees. PHN staff will also provide guidance to their primes on collecting certification forms from their subawardees. At this time, USAID/W and mission officers responsible for PHN activities are asked to:

1. *identify those organizations that your operating unit manages at the prime award level, which are expected to receive FY 2000 population funds, and determine which organizations are covered by the certification procedure and/or will have covered subawardees;*
2. *distribute the Certification Form and related Guidance to all prospective prime awardees, together with an appropriate request letter asking for certifications by March 17, 2000 (Request letters to prospective non-U.S. and U.S. prime awardees are provided as Attachments 3 and 4, respectively. It is recommended that request letters be signed by the mission officer responsible for PHN activities.); and*
3. *respond to questions from prime awardees to facilitate and ensure their collection of certification forms from their covered subawardees.*

G/PHN has engaged the services of John Snow, Inc. (JSI) to help track and maintain copies of certification forms. In accordance with the attached sample request letters, centrally-managed U.S. primes will be required to collect and maintain original certification forms from their covered subawardees and fax one copy of each form received directly to JSI, by March 24, 2000. Mission-managed primes, both U.S. and non-U.S., will be required to provide original forms to the mission officer responsible for PHN activities or his/her designee and maintain copies on file. Mission staff must:

4. *retain original certification forms on file and fax, by March 24, 2000, one copy of each form received to:*

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John Snow, Inc.
1616 North Fort Myer Drive, 11th Floor
Arlington, VA 22209
Attention: (name to be determined)
Tel: 703-528-7474
Fax: 703-528-7480

Bu/kyg

To assist with tracking and avoid requiring organizations to complete multiple forms, JSI will compile names of organizations that certify and make this list available periodically to G/PHN/POP, missions and prime awardees for reference. (In the event that a covered subawardee receives funding from more than one prime, it is recommended that PHN staff identify a lead prime to obtain the certification and coordinate with JSI to ensure a copy is distributed to all primes that require it.) JSI will forward copies of forms for organizations that decline to certify immediately to G/PHN/POP.

To allow USAID to allocate funds within the \$15 million cap, prime awardees are also required to provide to their CTOs anticipated FY 2000 funding levels for non-certifying subawardees. The Request Letters in Attachments 3 and 4 requires primes to provide this information to their CTOs by March 24, 2000. Upon receipt,

5. CTOs are required to provide this information, as well as proposed FY 2000 funding levels for any covered prime organization that does not certify, to USAID/G/PHN/POP, by March 31, 2000.

Once USAID/G/PHN/POP has collected certification forms and analyzed funding requirements for non-certifying covered organizations, it will inform operating units of their authorized funding levels of FY 2000 population funds for non-certifying organizations, at both prime and subaward levels. Written approvals will normally be conveyed by email. Timely receipt of forms and related financial information is essential to avoid delays in implementing the FY 2000 population program.

PHN staff should impress upon partner organizations the importance of collecting certifications in a timely manner from every covered organization that is prepared to provide one. If the worldwide demand for unrestricted funds

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exceeds \$15 million, some or all individual awards to non-certifying covered organizations will have to be reduced.

Organizations that will not receive FY 2000 funding are not required to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds. PHN officers should reiterate this point with their intermediaries.

Please note that a Contract Information Bulletin is also being issued to inform contract and grant officers of a new clause/provision to be added to all existing and new agreements and subagreements that commit FY 2000 population funds, describing awardees' obligations with respect to the certification procedures, filing requirements and remedies for non-compliance.

Questions and Additional Guidance: The guidance in Attachment 2 is intended to address questions about the certification procedure and the certification requirements themselves. This guidance cannot anticipate every question or specific factual situation that will arise in the field. Field PHN staff are encouraged to work closely with their Regional Legal Advisors to resolve specific issues and to seek further guidance from G/PHN, GC, or PPC, when necessary. If similar questions are received from several Missions or partner organizations, USAID/W will consider preparing additional guidance on "frequently asked questions".

For further information concerning this notice, please contact Scott Radloff, Acting Director, Office of Population, 202-712-0855.

Attachments:

1. FY 2000 Population Assistance Certification Form
2. Guidance for FY 2000 Population Assistance Certification
3. Request Letter for Non-U.S. Prime Awardee
4. Request Letter for U.S. Prime Awardee

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January 2000

Guidance for FY 2000 Population Assistance Certification

Section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), requires that certain organizations (hereafter called "covered" organizations) certify they will not engage in specified abortion-related activities, using either USAID or non-USAID funds, during a specified period, in order to be eligible to receive FY 2000 population funds appropriated by PL 106-113 (hereafter "FY 2000 Population Funds"). Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the referenced law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form for purposes of receiving FY 2000 Population Funds. The form provides options for organizations to certify (Option No. 1) or decline to certify (Option No. 2). USAID requires prime awardees that expect to receive FY 2000 Population Funds, both U.S. and non-U.S., to identify their covered subawardees at all levels or "tiers" below the prime agreement and collect certification forms from those covered organizations. With the information provided by the forms, USAID will determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap.

The present guidance is provided to assist intermediary organizations to implement the certification procedure with subawardees and assist covered organizations to complete the Certification Form.

1. Which organizations are "covered" by the certification procedure and will be asked to complete the Certification Form?

- ◆ Private, non-governmental entities, whether non-profit or profit-making, which are organized under the laws of a country other than the United States, and

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- ◆ Multilateral (including global or regional) organizations which consist of member states,

that are scheduled to receive FY 2000 Population Funds, either directly from USAID through a prime contract, grant or cooperative agreement, or as subcontractors or subgrantees (hereafter "subawardees").

2. Which organizations are not "covered" by the certification procedure and will not be asked to complete the Certification Form?

Organizations not covered by the certification procedure include all U.S. government and U.S. private, non-governmental organizations and foreign governments. In addition, under the statute, organizations that receive only in-kind assistance (for example, in the form of technical assistance or commodities) are not covered. Also, commercial firms that are not engaged in family planning activities (for example, firms that supply goods and services of an administrative nature, such as suppliers of computer equipment, office supplies, maintenance or printing services) are not required to complete the certification form.

Organizations that will not receive FY 2000 funding are not required to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

3. What is the meaning of the certification provision stating the organization "will not perform abortions...?"

The certifying organization certifies that it will not perform abortions in any foreign country (that is, in any country outside the U.S.), except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest. The certification restricts performance of abortion even in countries where abortion is permitted under local law.

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Provision, consistent with local law, of information or counseling about all pregnancy options is not restricted by the certification. The certification does not restrict organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. (This certification requirement is in addition to the limitation on performing abortions as described in item 3-- a limitation which, as noted above, is more restrictive than local law in some countries.) Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited"?

The statutory language quoted here refers to activities or efforts by the organization which are intended to alter the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign

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country concerning the circumstances under which abortion is permitted, regulated, or prohibited;

- Public outreach activities or efforts (for example, as reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or
- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.

b. Also not covered are activities and efforts which lack an element of advocacy and are thus not intended to alter laws or policies, such as:

i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of existing abortion laws or policies;

ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and

iii) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities are not covered because, although they may involve advocacy, they do not involve altering laws or policies, for example, engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the

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circumstances under which abortion is permitted, regulated or prohibited, such as:

i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort of a *de minimis* (that is, minimal or negligible) or incidental nature, and which does not reflect an intention by the organization to alter laws and policies, would not be covered. Examples of such an activity or effort would include:

i) An incidental statement in a publication, meeting, workshop or communication to the mass media that is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

ii) Attendance by an organization's representatives at a meeting where altering abortion laws and policies may be discussed, provided the organization is not engaged in activities or efforts intended to alter abortion laws or policies of foreign countries;

iii) Sponsorship of a meeting where altering abortion laws or policies may be discussed incidentally, provided that such discussions are *de minimis* and are not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries; or

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iv) The organization's membership in a network of organizations, provided such membership does not involve active participation by the organization in activities or efforts of the network to alter the abortion laws or government policies of foreign countries.

6. If my organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the certification form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if my organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. If a covered organization does not certify, can it still receive FY 2000 funding?

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Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

9. What if one or more subawardees of my organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

10. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in activities described in the certification?

In that case, a non-certifying organization could engage in the activities described in the certification, provided that the activities are conducted with non-USAID funding. Non-certifying organizations and all other organizations remain subject to standard clause/provision on Voluntary Population Activities (March 1999), which states:

(1) No funds made available under this award shall 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 women to coerce or motivate*/ women to have abortions; (iii) payments to persons to perform abortions or to solicit women 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 abortion.

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(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 in 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.

The above restrictions on the use of USAID funds are broader (that is, more restrictive) in some respects than the limitations contained in the certification.

*/ Note that Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000, under the heading "Development Assistance", provides that the term "motivate" shall not be construed to prohibit the provision, consistent with local law, of information or counselling about all pregnancy options.

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**Request Letter for Non-U.S. Prime Awardee
for FY 2000 Population Assistance Certifications**

Dear (Name of Grantee/CA or Contract Representative):

A new U.S. law appropriating FY 2000 population funds* requires non-U.S., non-governmental organizations (NGOs), private firms, and multilateral organizations (hereafter called "covered" organizations) to certify that they will not engage in specified abortion-related activities during the period funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees, and to activities funded with either USAID or non-USAID funds. Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form, which gives covered organizations the option to certify or not certify. This Form and related guidance are attached.

USAID is considering your organization for direct support with FY 2000 population funds and has identified your organization as one covered by the certification procedure. In addition, we anticipate that your organization may provide such funds to other covered organizations through subagreements. We therefore request your assistance on three actions below:

- 1) We ask that you review the enclosed Certification Form and related Certification

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Guidance with respect to the activities of your own organization. The form provides options for organizations to certify (Option No. 1) or to decline to certify (Option No. 2). After selecting one of the options and obtaining the signature of an authorized representative, please return the form to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000.

2) USAID must also ask your organization to identify covered subcontractor and subgrantee organizations (subawardees) that you expect to finance with FY 2000 population funds under your planned agreement with USAID. Such subawardees should be asked to complete the Certification Form, based on information contained in the Certification Guidance. Please forward the completed forms to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000. All forms should include at the top the appropriate contact names for your organization as the prime contractor/grantee.

3) For all covered subawardees that do not certify, provide the estimated level of USAID FY 2000 population funds that your organization expects to provide. If you are uncertain, indicate the likely minimum and maximum amounts. This information should be sent to your Cognizant Technical Officer (or other designated USAID mission officer) by March 24, 2000, for forwarding to USAID/Washington. Organizations that do not certify are only eligible for funding with prior approval from USAID/W.

USAID will use the forms and related financial information to determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap and at what levels. Receiving the requested information on time is essential to USAID's decision-making regarding allocation of the \$15 million. Although the time required for covered organizations to review the guidance and complete the form will vary, it is expected that most will require

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approximately four person-hours. The collection of forms from subawardees should take less than 40 hours on average.

Also, remember that funding for organizations that do not certify is very limited. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funding for some or all of these organizations. Organizations that do not certify should be made aware of the risk that their FY 2000 funding could be reduced. Organizations that do certify may receive FY 2000 funds without regard for the \$15 million cap.

Implementation of the new FY 2000 requirements will be monitored closely by USAID/Washington and the U.S. Congress. You must pay careful attention to how you commit your USAID population funds and track funding for your subgrantees and subcontractors. Accurate accounting will be necessary to ensure that commitments of FY 2000 population funds can be identified and distinguished from prior year funds as well as from funds received from other USAID accounts or from non-USAID sources.

Please note that a new clause/provision will be added to all existing and new agreements and subagreements that commit FY 2000 population funds, describing awardees' obligations with respect to the certification procedures, filing requirements and remedies for non-compliance.

The text of this letter and enclosures may also be found on (websites -- USAID and/or John Snow Int'l.)

We very much appreciate your cooperation in helping us to comply with these new requirements. If you have questions concerning the letter or the enclosures, please contact: (the mission officer signing the letter, or other designated contact).

Sincerely,

(name of mission officer
responsible for PHN
activities)

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Enc:

Guidance for FY 2000 Population Assistance Certification
FY 2000 Population Assistance Certification Form

*Section 599D of the Foreign Operations, Export Financing,
and Related Programs Appropriations Act, 2000, enacted in
P.L. 106-113

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**Request Letter for U.S. Prime Awardee
(with non-U.S. Covered Subawardees)
for FY 2000 Population Assistance Certification**

Dear (Name of Grantee/CA or Contract Representative):

A new U.S. law appropriating FY 2000 population funds* requires non-U.S., non-governmental organizations (NGOs), private firms, and multilateral organizations (hereafter called "covered" organizations) to certify that they will not engage in specified abortion-related activities during the period funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees, and to activities funded with either USAID or non-USAID funds. Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form, which gives covered organizations the option to certify or not certify. The Form and related guidance are attached.

USAID is considering your organization for direct support with FY 2000 population funds. As a U.S. entity, your organization is not covered by the certification procedure. However, we anticipate that your organization would provide FY 2000 population funds to covered non-U.S. organizations through subagreements under your planned agreement with USAID. To implement the certification procedure for covered organizations receiving FY 2000 USAID population funds as subawardees, we request your assistance on three actions below:

- 1) Please review the enclosed Certification Guidance and identify covered subawardee organizations that you expect to finance with FY

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2000 population funds under your planned agreement with USAID.

2) Ask all covered subawardee organizations to review the enclosed Certification Guidance, complete the Certification Form, and provide it to you. We ask that you collect the requested certification forms as soon as possible. Note that all forms should include the appropriate contact names for your agency as the prime contractor/grantee. [For centrally-managed U.S. primes: Please retain original signed forms in your files and fax copies of all forms received to the following address, no later than March 24, 2000:

John Snow, Inc.
1616 North Fort Myer Drive, 11th Floor
Arlington, VA 22209
Attention: (name to be determined)
Tel: 703-528-7474
Fax: 703-528-74802)]

OR

[For mission-managed primes: Please forward the completed forms to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000.]

3) For all covered subawardees that do not certify, provide the estimated level of USAID FY 2000 population funding that your organization expects to provide. If you are uncertain, indicate the likely minimum and maximum amounts for FY 2000. [For centrally-managed U.S. primes: This information should be sent to your CTO by March 24, 2000, who will provide it to G/PHN/POP.] **OR** [For mission-managed U.S. primes: This information should be sent to your CTO and provided to me (or other designated USAID mission contact) by March 24, 2000, for forwarding to USAID/Washington.] Organizations which do not certify are only eligible for funding with prior approval from USAID/W.

USAID will use information provided by the forms to determine which organizations may be funded outside the \$15

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million cap and which organizations must be funded within the \$15 million cap and at what levels. Receiving the requested information on time is essential to USAID's decision-making regarding allocation of the \$15 million. Also remember that funding for organizations that do not certify is very limited. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funding for some or all of these organizations. Organizations that do not certify should be made aware of the risk that their FY 2000 funding could be reduced. Organizations that do certify may receive FY 2000 funds without regard for the \$15 million cap.

Although time required to collect certification forms will vary, most intermediaries are expected to require less than 20 person-hours of time to complete the collection process. John Snow, Inc. (JSI) will retain faxed copies of certification forms for your subawardees. To avoid requiring subawardees to sign multiple forms, JSI will also maintain a list of all certifying organizations for your future reference. Forms for non-certifying organizations will be forwarded immediately by JSI to USAID.

Implementation of the new FY 2000 requirements will be monitored closely by USAID/Washington and Congress. You must pay careful attention to how you commit your USAID population funds and track funding for your subgrantees and subcontractors. Accurate accounting will be necessary to ensure that commitments of FY 2000 population funds can be identified and distinguished from prior year funds as well as from funds received from other USAID accounts or from non-USAID sources.

Organizations that will not receive FY 2000 funding are not required to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, intermediary organizations are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

Please note that a new clause/provision will be added to all agreements and subagreements describing awardees'

decline to certify (Option No. 2). After selecting one of the options and obtaining the signature of an authorized representative, please return the form to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000.

2) USAID must also ask your organization to identify covered subcontractor and subgrantee organizations (subawardees) that you expect to finance with FY 2000 population funds under your planned agreement with USAID. Such subawardees should be asked to complete the Certification Form, based on information contained in the Certification Guidance. Please forward the completed forms to me (or other designated USAID mission contact) as soon as possible, but no later than March 17, 2000. All forms should include at the top the appropriate contact names for your organization as the prime contractor/grantee.

3) For all covered subawardees that do not certify, provide the estimated level of USAID FY 2000 population funds that your organization expects to provide. If you are uncertain, indicate the likely minimum and maximum amounts. This information should be sent to your Cognizant Technical Officer (or other designated USAID mission officer) by March 24, 2000, for forwarding to USAID/Washington. Organizations that do not certify are only eligible for funding with prior approval from USAID/W.

USAID will use the forms and related financial information to determine which organizations may be funded outside the \$15 million cap and which organizations must be funded within the \$15 million cap and at what levels. Receiving the requested information on time is essential to USAID's decision-making regarding allocation of the \$15 million. Although the time required for covered organizations to review the guidance and complete the form will vary, it is expected that most will require approximately four person-hours. The collection of forms from subawardees should take less than 40 hours on average.

Also, remember that funding for organizations that do not certify is very limited. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funding for some

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**Request Letter for Non-U.S. Prime Awardee
for FY 2000 Population Assistance Certifications**

Dear (Name of Grantee/CA or Contract Representative):

A new U.S. law appropriating FY 2000 population funds* requires non-U.S., non-governmental organizations (NGOs), private firms, and multilateral organizations (hereafter called "covered" organizations) to certify that they will not engage in specified abortion-related activities during the period funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered organizations receiving FY 2000 population funds either directly from USAID or as subcontractors or subgrantees, and to activities funded with either USAID or non-USAID funds. Although President Clinton has exercised statutory authority to waive this requirement, only a limited amount of funding may be provided under the law--a total of \$15 million for population activities worldwide--to covered organizations that do not certify.

To implement the law, USAID is asking all covered organizations to complete an FY 2000 Population Assistance Certification Form, which gives covered organizations the option to certify or not certify. This Form and related guidance are attached.

USAID is considering your organization for direct support with FY 2000 population funds and has identified your organization as one covered by the certification procedure. In addition, we anticipate that your organization may provide such funds to other covered organizations through subagreements. We therefore request your assistance on three actions below:

- 1) We ask that you review the enclosed Certification Form and related Certification Guidance with respect to the activities of your own organization. The form provides options for organizations to certify (Option No. 1) or 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 women to coerce or motivate*/ women to have abortions; (iii) payments to persons to perform abortions or to solicit women 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 abortion.

(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 in 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.

The above restrictions on the use of USAID funds are broader (that is, more restrictive) in some respects than the limitations contained in the certification.

*/ Note that Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000, under the heading "Development Assistance", provides that the term "motivate" shall not be construed to prohibit the provision, consistent with local law, of information or counselling about all pregnancy options.

agreements, subagreements and related amendments which provide FY 2000 Population Funds include a clause describing the certification procedure and providing standard remedies available when a certifying organization fails to comply with the terms of a certification, such as refund and termination. This is consistent with the way USAID and other federal agencies ensure compliance by contractors, grantees, recipients and subawardees with other certification requirements and is necessary to ensure that the statutory \$15 million funding cap is observed.

8. If a covered organization does not certify, can it still receive FY 2000 funding?

Covered organizations that decline to certify will be considered for financing with FY 2000 Population Funds. However, funding for organizations that do not certify is capped in the aggregate at a total of \$15 million worldwide. If the demand for funds by organizations that do not certify exceeds the \$15 million available, USAID will be required to reduce funds for some or all of these organizations. Organizations that do not certify should be aware of the risk that their FY 2000 funding could be reduced.

9. What if one or more subawardees of my organization do not certify?

Funds which are passed on to a subawardee that does not certify must count against the \$15 million cap. Accordingly, funding levels for all such subawardees must receive express, written approval by USAID/G/PHN/POP.

Funds provided to a U.S. prime or to a certifying non-U.S. prime for its own use, and funds to subawardees that are not covered or that certify, will not count against the cap.

10. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in activities described in the certification?

In that case, a non-certifying organization could engage in the activities described in the certification, provided that the activities are conducted with non-USAID funding. Non-certifying organizations and all other organizations remain subject to standard clause/provision on Voluntary Population Activities (March 1999), which states:

- (1) No funds made available under this award shall be used to finance, support, or be attributed to

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i) An ~~incidental~~ statement in a publication, meeting, workshop or communication to the mass media that is not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries;

ii) Attendance by an organization's representatives at a meeting where altering abortion laws and policies may be discussed, provided the organization is not engaged in activities or efforts intended to alter abortion laws or policies of foreign countries;

iii) Sponsorship of a meeting ^{which does not have as its purpose...} where altering abortion laws or policies may be discussed ~~incidentally~~, provided that such discussions are *de minimis* and are not part of activities or efforts by the organization intended to alter the abortion laws or policies of foreign countries; or

iv) The organization's membership in a network of organizations, provided such membership does not involve active participation by the organization in activities or efforts of the network to alter the abortion laws or government policies of foreign countries.

6. If my organization certifies, for what time period are abortion-related activities restricted?

A certifying organization is restricted from engaging in abortion-related activities specified in the certification form from the date the certifying organization signs an agreement under which it will receive FY 2000 Population Funds through the last date on which such funds are initially available for obligation by USAID, that is, September 30, 2001. The date is September 30, 2001, because FY 2000 funds are initially available for obligation over a two-year period.

7. What if my organization certifies, but does not comply with the terms of the certification?

Option No. 1 on the Certification Form states that the certification is a material fact upon which USAID and intermediary funding organizations rely in providing FY 2000 Population Funds. This means that USAID, and the intermediaries, rely on the truth and accuracy of the certification statement, as an essential or "material" piece of information, in the decision to provide funds outside the limited \$15 million cap. USAID will require that all

activities (for example, firms that supply goods and services of an administrative nature, such as suppliers of computer equipment, office supplies, maintenance or printing services) are not required to complete the certification form.

Organizations that will not receive FY 2000 funding are not required to certify. In some instances, due to pipelines and normal budgetary considerations, organizations receiving FY 1998 or FY 1999 funds are not currently scheduled to receive any FY 2000 funds and therefore will not be asked to certify. However, in making funding decisions, particularly for organizations that do not certify, USAID operating units and prime awardees are to proceed according to current schedules and must not circumvent the certification procedure through use of prior year funds.

3. What is the meaning of the certification provision stating the organization "will not perform abortions..."?

The certifying organization certifies that it will not perform abortions in any foreign country (that is, in any country outside the U.S.), except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest. The certification restricts performance of abortion even in countries where abortion is permitted under local law. Provision, consistent with local law, of information or counseling about all pregnancy options is not restricted by the certification. The certification does not restrict organizations from treating injuries or illnesses caused by legal or illegal abortions ("post-abortion care").

4. What does it mean to "not violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited"?

The certifying organization certifies that it will not engage in any activity that violates the laws of any country outside the U.S., with respect to the circumstances under which abortion is permitted, regulated or prohibited. (This certification requirement is in addition to the limitation on performing abortions as described in item 3--a limitation which, as noted above, is more restrictive than local law in some countries.) Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

5. What does it mean to "engage in activities or efforts to alter the laws or governmental policies of any foreign

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country concerning the circumstances under which abortion is permitted, regulated, or prohibited”?

The statutory language quoted here refers to activities or efforts by the organization which are intended to alter the laws or policies of foreign governments (or governmental agencies) with respect to the circumstances under which abortion is permitted, regulated, or prohibited. With the exception of item (a) below, this language includes an organization's intentional efforts or activities to alter abortion laws or policies, whether the objective is more restrictive or less restrictive laws or policies. It does not include activities or efforts which are not intended to alter abortion laws or policies, but which may have that effect.

The quoted language covers the following types of activities and efforts undertaken by an organization:

- Oral or written communications, directed to a country's legislators, government officials, or political candidates, that support proposals or recommendations to alter laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited;
- Public outreach activities or efforts (for example, as reflected in newsletters, editorials or other mass media communications) intended to alter such laws or governmental policies; or
- Organizing meetings, mass demonstrations (e.g., rallies or marches), or media events intended to alter such laws or governmental policies.

The quoted language does not cover certain types of activities or efforts as follows.

- a. Statutory language expressly excludes activities and efforts undertaken in opposition to coercive abortion or involuntary sterilization.
- b. Also not covered are activities and efforts which lack an element of advocacy and are thus not intended to alter laws or policies, such as:
 - i) Research and dissemination of information, including responses to inquiries, on the incidence, causes, or consequences of abortion or the status of

existing abortion laws or policies;

ii) Interactions with legislators or government officials in which the organization is giving or obtaining factual information, provided that such interactions are not part of activities or efforts intended to alter abortion laws or policies; and

iii) A multilateral organization's response to a request from a member state for information or technical assistance relative to its abortion laws or policies.

c. Certain activities are not covered because, although they may involve advocacy, they do not involve altering laws or policies, for example, engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies.

d. Certain activities are not covered because they do not involve altering laws or policies concerning the circumstances under which abortion is permitted, regulated or prohibited, such as:

i) activities or efforts intended to alter legal penalties applied to women who obtain abortions (e.g., "decriminalization"); and

ii) activities and efforts related to laws or policies specifically addressing treatment of injuries or illnesses caused by legal or illegal abortions (e.g., "post-abortion care").

e. Some activities are not covered because they do not involve actions by an organization, that is, statements or actions by an individual employee or officer of an organization which are undertaken in a personal capacity and not on behalf of or under the auspices of the organization. An individual, or his or her organization, must take reasonable steps to convey that the statements or actions are undertaken in a personal capacity.

f. Finally, based on the language "engage in activities and efforts," an individual activity or effort of a *de minimis* (that is, minimal or negligible) or incidental nature, and which does not reflect an intention by the organization to alter laws and policies, would not be covered. Examples of such an activity or effort would include:

Clinton Speaks Out on U.S. and International Family Planning Programs

RADIO ADDRESS OF THE
PRESIDENT
TO THE NATION
As delivered from The White House,
Saturday, January 8, 2000

"Good morning. January is the time of year when many of us make New Year's resolutions, and work hard to keep them. Today, I want to talk about steps we're taking to keep a resolution of mine -- making sure women and men get the health care they need to have strong children and healthy families.

"First, our administration has worked hard to make sure all women have access to prenatal care. We know when women get medical attention before a baby is born, that child is much more likely to be born healthy. And good health is the most precious gift we can offer a child or a family.

"Second, we worked with Congress to make sure that every woman covered by federal government health insurance has reproductive health care coverage -- including prescription contraceptives. That was a significant step for more than a million American women, and it set a standard for insurance coverage around the country.

"Third, when I took office, we faced an epidemic of teen pregnancy -- children having children. Over the last seven years,

we have reached out to community groups, schools and health professionals working in an amazing network of American citizens from all walks of life. And, together, the American people have cut teen pregnancy by 15 percent.

"Fourth, we've made a broad range of family planning and sex education programs more widely available for all Americans. And by making sure women have family planning choices, we are helping to make abortion more rare.

"Today I am glad to announce we will be increasing funds for family planning and reproductive health care by \$35 million next year. My budget for 2001 will include \$274 million in grants for clinics and community-based health services that reach more than 5 million women and families.

"America has also been a leader in providing health and family planning assistance for women and families in developing

***countries. We do this because it's
right, and because it will help
build the kind of world we want
for our own children."***

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"That money will help make contraceptives available, and keep them affordable. It will fund counseling for teenagers, and support educational programs that encourage young people to postpone sexual activity. It will help more than 4,600 clinics screen for cancer, AIDS and other diseases. And it will fund partnerships with community organizations and health care professionals who are reaching out to teenagers and others at risk.

"My budget for 2001 will increase funding for international family planning by almost \$170 million. I am asking Congress to support these funds, and to provide them without restrictions that hamper the work of family planning organizations, and even bar them from discussing or debating reproductive health policies."

"These services make a critical difference in people's lives. They help working women who otherwise could not afford medical tests that may save their lives. They help AIDS patients who desperately need counseling and assistance. They provide support and information to young people who may not know the basics of caring for a newborn child. They give women access to the full range of reproductive health care -- before and during pregnancy. It's in the interest of every American that no one miss out on this kind of care -- and that no child miss the chance for a healthy start.

"America has also been a leader in providing health and family planning assistance for women and families in

developing countries. We do this because it's right, and because it will help build the kind of world we want for our own children.

"Around the world, 150 million women would like to choose the timing of their pregnancies, but have no access to family planning of any kind. In the developing world, the complications of pregnancy kill more than one woman every single minute, because so many lack the most basic health care. These are personal tragedies, and they have profound consequences for families and communities. Where children are born healthy, and mothers and families gain power over their lives, communities are stronger. Economic progress is faster. And the future is brighter for everyone.

"My budget for 2001 will increase funding for international family planning by almost \$170 million. I am asking Congress to support these funds, and to provide them without restrictions that hamper the work of family planning organizations, and even bar them from discussing or debating reproductive health policies.

"We all agree that we want to save lives, help women and children stay healthy and empower families to take responsibility for their own choices. Supporting reproductive health and family planning is one of the very best ways to do that. We know it works. At home and abroad, we don't have a woman's life -- or a child's healthy start -- to waste."