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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 request 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

- ♦ 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 requested 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

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. prime awardees, other 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 receiving funds 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 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 their respective prime awardees 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, including those funded through the field support mechanism, 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:*

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

To assist with tracking and avoid requiring organizations to complete multiple forms, JSI will compile names of organizations that certify and make this information available upon request 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, including those that elect not to complete the form. The Request Letters in Attachments 3 and 4 require 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 or complete the form, to Scott Radloff, 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 coordinate with other Agency units to set approved levels of FY 2000 population funding for non-certifying organizations, at both prime and subaward levels. Written approvals will normally be conveyed by email from G/PHN/POP. 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 funding from non-certifying, covered organizations exceeds \$15 million, some or all individual awards to such organizations will have to

be reduced.

Organizations that will not receive FY 2000 funding are not requested 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

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.

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Organizations that will not receive FY 2000 funding are not requested 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. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

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 change 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 or are not otherwise 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) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

iv) Sponsorship of a meeting where altering abortion laws or policies is not the purpose or focus, but where the subject arises incidentally; or

v) 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 which may include an element of advocacy but which is of a *de minimis* (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort is not reasonably intended by the organization to alter laws and policies. Examples of such an activity or effort would include:

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

- ii) The organization's membership in a network of organizations which may advocate altering abortion laws or policies, provided such membership does not involve active participation by the organization in such activities or efforts of the network; or

- iii) Any other individual activity or effort that in and of itself may contain an element of advocacy, but that is incidental, unintended, or *de minimis* in nature.

6. If an 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 an 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. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. 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.

10. What if one or more subawardees of an intermediary 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.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.

**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 affecting 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 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 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. If you select Option 2, or if you do not return the form, you will be considered as "non-certifying."

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 firmly capped at \$15 million. 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 by USAID/Washington and the U.S. Congress. When you commit your USAID population funds, please track funding for your subgrantees and subcontractors carefully. 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)

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

**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 affecting 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 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 select Option 2 on the Certification Form or which do not return the form 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. Also remember that funding for organizations that do not certify is firmly capped at \$15 million. 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 by USAID/Washington and Congress. When you commit your USAID population funds, please track funding for your subgrantees and subcontractors carefully. 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 requested 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' obligations with respect to the certification procedures for FY 2000 population funds and remedies for non-compliance.

The text of this letter and enclosures may also be found on (website -- USAID and/or John Snow International).

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 : (names to be determined)

Sincerely,

(name to be determined, a
USAID/W official; or, in the
case of Mission-funded U.S.-
based primes, the mission
officer responsible for PHN
activities)

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

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Rodney W. Johnson, Director

TO: Distribution List FAC

CONTRACT INFORMATION BULLETIN 00-

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 (hereafter "FY 2000 Population Funds") to non-U.S., nongovernmental organizations, whether non-profit or profit-making, and multilateral organizations (hereafter 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. 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. Thus, when certifications cannot be obtained, USAID may provide funding to non-certifying, covered organizations only within the limited \$15 million cap. The certification requirement does not apply to U.S. primary awardees, other U.S. entities, foreign governments and certain others.

To implement the law, USAID is requesting all covered prime awardees to complete an FY 2000 Population Assistance Certification Form, prior to receiving FY 2000 Population Funds, which indicates whether the prime certifies or declines to certify. In addition, USAID will require all prime awardees receiving FY 2000 Population Funds, whether

Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations.

they are covered or not, to request certification forms from their covered subawardees at all levels below the prime award. USAID/G/PHN must specifically approve the funding levels of FY 2000 Population Funds for all non-certifying organizations. PHN staff in Washington and the field will be responsible for collecting certification forms from prime awardees, responding to questions from prime awardees to facilitate their collection of certification forms from their covered subawardees, and obtaining approvals of funding levels for non-certifying organizations from USAID/G/PHN.

Prior to making any award to a covered organization funded with FY 2000 Population Funds, COs and Grant/Agreement Officers must obtain written confirmation from the requesting office that a certification is on file or that, in the case of an organization that declines to certify, or does not complete the certification form, USAID/G/PHN has approved funding for the awardee under the \$15 million cap. In addition, Contract/Agreement Officers must include the appropriate clause/provision (attached) in all prime awards committing FY 2000 Population Funds. The clause for use in contracts is Attachment 1. The provision for grants and cooperative agreements is Attachment 2. The Certification Form and Certification Guidance (Attachments 3 and 4) must also be attached to the award document.

Attachment 1

Contract Clause to be included in Part H when FY 2000 population funding may be provided in the contract.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations ("covered" organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Contracting Officer.

(b) (1) Prior to the award of any sub-contract or grant to a covered organization that might include FY 2000 population funds, the Contractor must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Contracting Officer.

(2) If the subawardee returns the form, the Contractor must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Contractor may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Contractor may not make the subaward until it receives from the Director of USAID's Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Contractor must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its contract files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Contractor awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved

commitment of FY 2000 population funds under this contract in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Contractor may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This clause must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The clause need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.

Attachment 2

Provision for Grants and Cooperative Agreements to be included in the agreement when FY 2000 population funds may be provided.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations ("covered" organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Agreement Officer.

(b) (1) Prior to the award of any sub-contract, grant, or cooperative agreement to a covered organization that might include FY 2000 population funds, the Recipient must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Agreement Officer.

(2) If the subawardee returns the form, the Recipient must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Recipient may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Recipient may not make the subaward until it receives from the Director of USAID's Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Recipient must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its agreement files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Recipient awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved commitment of FY 2000 population funds under this Agreement in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Recipient may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This provision must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The provision need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.

To: Internet [michelle.peterson@who.eop.gov]
From: Barbara Crane@G.PHN.POP@AIDW
Cc: Duff Gillespie@G.PHN.DAA@AIDW, Patricia Ramsey@GC@Aidw, Scott
Radio@G.PHN.POP@AIDW
Subject: Final approval: populatoin cert. guidance, dated 1/24
Attachment: CERTGUIDE-SP.DOC, BEYOND.RTF
Date: 01/24/2000 4:23 PM

Shelly -- The attached version of the guidance, which now has today's date on it, reflects the changes we discussed and completed this afternoon. I took out strikeouts and italics for this version, so that you can see it clean. The paragraphs we were discussing that would benefit from your final review now are:

(b) -- the lead-in statement and iv, and
all of (f).

Following your approval (for the White House), we have a few steps to take care of here, but then might hope to begin sending this out by late morning or mid-day tomorrow. We also plan to send courtesy copies to State and OMB, as well as senior staff here, hopefully this evening if we receive your final word.

Let me thank you again for all your support throughout this process.
Barbara Crane

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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 request 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?

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- 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
- 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 requested 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

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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. Organizations should seek the advice of local counsel with respect to the application of local laws to their activities.

Note that organizations that certify are required to comply both with the restriction on performing abortions and the restriction on violating local law. In some countries, for example, where abortion is legal under most circumstances, the former restriction will govern. In others, for example, where abortion is prohibited even in cases of rape and incest, the latter restriction will govern.

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 change 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.

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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 are not intended to promote changes in abortion 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) Attendance by an organization's representatives at a meeting concerning altering abortion laws and policies, provided that such attendance is not part of activities or efforts intended to alter abortion laws or policies;

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- iv) Sponsorship of a meeting or conference where existing abortion laws and policies are addressed, but where changes in such laws and policies may only be raised and dealt with in an incidental or minimal way;
 - v) 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 or efforts directed to legislators, government officials, or the public are not covered because they involve engaging in efforts to maintain existing laws or policies or to ensure implementation of existing laws or policies, and therefore are not concerned with altering abortion 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 that may endorse or otherwise promote changes in abortion laws or policies but that is of a *de minimis* (that is, minimal or negligible) or incidental nature, would not be covered. Such an activity or effort would not be reasonably intended or expected by the organization to have the effect of

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altering laws or policies. Examples of such an activity or effort would include:

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

ii) The organization's membership in a network of organizations which may intentionally promote changes in abortion laws or policies, provided such membership does not involve active participation by the organization in such activities or efforts of the network; or

iii) Any other individual activity or effort of the organization that is incidental or *de minimis* in nature.

6. If an 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 an 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

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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. What if an organization certifies, but never receives FY 2000 population funds?

The certification covers a period beginning on the date an organization signs an agreement to receive FY 2000 population funds. If the organization never signs such an agreement, the certification restrictions will not apply.

9. 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.

10. What if one or more subawardees of an intermediary 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.

11. If an organization does not certify and receives USAID funding under the \$15 million, may it engage in the

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activities identified in Option 1 in the Certification Form?

A non-certifying organization that receives funding under the \$15 million cap may engage in the activities identified in Option 1 in the Certification Form, provided that the activities are not conducted with USAID funds. Non-certifying organizations and all other organizations receiving USAID funds remain subject to abortion-related restrictions in the standard clause/provision on Voluntary Population Activities (March 1999).

12. What if a covered organization does not wish to complete the Certification Form at all?

Organizations do not have to complete the Certification Form. USAID is aware that some organizations may have reservations about the certification procedure or may be concerned about disclosure of the forms and use of the information contained in them. Such organizations may prefer not to complete the form, either to certify or decline to certify. If an organization does not complete the form, it will be non-certifying for purposes of funding decisions.