



AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Part 700

RIN 0412-AA73

USAID Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Agency for International Development (USAID)

ACTION: Final rule.

SUMMARY: USAID is issuing a final rule adopting with amendments the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," issued by the Office of Management and Budget and published in Federal Register on December 26, 2013. Consistent with the OMB rule, USAID's rule supersedes USAID's "Administration of Assistance Awards to U.S. Non-Governmental Organizations." Parts of this final rule apply to for-profit entities in limited circumstances and to foreign organizations as described in this guidance.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

A. Background

The Agency for International Development issued an interim final rule with a request for comments adopting the Office of Management and

Budget's "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and published in the Federal Register in Vol. 78, No. 248 (Dec. 26, 2013). This OMB rule is codified at 2 CFR Part 200 and superseded OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. USAID's interim final rule and subsequent final rule replace 22 CFR Part 226, "Administration of Assistance Awards to U.S. Nongovernmental Organizations." Parts of this final rule also apply to for-profit entities in limited circumstances and to foreign organizations as described in this guidance.

Regulatory Authority: The authority for Part 700 reads as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435

B. Discussion of Comments

The public comment period on the proposed rule closed on March 6, 2015. USAID received comments and suggestions from two organizations on its interim final rule. The following responses address comments that were specific to USAID's implementation of OMB's rule. Comments regarding OMB's Administrative Requirements, Cost Principles, and Audit Requirements at 2 CFR Part 200 that did not affect USAID's implementation at 2 CFR Part 700 were not considered.

Applicability of Subparts D and E to Foreign Organizations:

Comment: Two commenters addressed USAID's application of 2 CFR Part 200 and 2 CFR Part 700 to foreign organizations. Agencies were given decision making authority on the applicability of 2 CFR Part 200 to non-US entities, which has resulted in a lack of consistency in applicability to non-US entities across the various federal agencies. Because the goal of this new regulation was to increase uniformity and

reduce administrative burden, Subparts A through E of 2 CFR Part 200 should be made applicable to all non-US entities, which will simplify and streamline sub-recipient monitoring, as well as implementation. The U.S. Agency for International Development has applied Subpart E inconsistently. Non-US entities will face different administrative requirements when they receive federal awards directly from these agencies. Pass-through entities that subaward funds to local indigenous organizations in host countries as well as to U.S. based entities must craft differing subaward agreements for each class of subrecipients and monitor and enforce differing requirements. Those non-US based subrecipients who receive funds that originate from USAID and from other federal agencies are subject to policies that are not uniform. We encourage USAID to use references to 2 CFR Part 200, Subpart D in its policies affecting non-US entities and to use the provisions of 2 CFR 200.207 to differentiate on an individual basis whether differing special conditions are warranted rather than continue to differentiate as they have done.

Response: USAID has modified 2 CFR Part 700 to clearly identify what parts of 2 CFR Part 200 apply to different entities. USAID will continue its longstanding practice of not applying the uniform set of administrative requirements consolidated in the new Uniform Requirements to foreign organizations. The Uniform Requirements would have significant negative implications for USAID's ongoing operations and awards involving foreign organizations. Taken as a whole, adoption by USAID of the Uniform Requirements to foreign organizations would impose U.S. requirements on local organizations working in English as a second language and unfamiliar with the technical wording and systems logic of federal regulations primarily directed at U.S. recipients, including U.S. and international non-governmental organizations,

universities, and research organizations. Application of these requirements would result in an across-the-board increase of administrative burden on local organizations and would seriously undermine USAID's development and sustainability goals that have been the subject of significant efforts to reduce such burdens and barriers to local organization partnerships with USAID.

More broadly, these changes would have a significant impact on the Agency's ongoing efforts to work directly with capable local organizations to fulfill our overall mandate to support sustainable development.

Applicability to Commercial Organizations:

Comment: Two commenters addressed the application of cost principles to for-profit entities. Section 2 CFR 200.101 indicates that Federal agencies may apply the Cost Principles, found in Subpart E, to commercial entities. OMB's decision to permit Federal awarding agencies to decide whether to apply the provisions of the Uniform Guidance to commercial organizations and its discussion of the applicability of Subpart E of 2 CFR Part 200 has created confusion as to the continuing role that the cost principles for commercial organizations contained in 48 CFR Subpart 31.2 have when the Federal award is made to a commercial organization.

In particular, the statement in 2 CFR 200.101(a) (i.e., "These requirements are applicable to all costs related to Federal awards."), the chart that follows in 2 CFR 200.101(b), and particularly the statement contained in 2 CFR 200.101(c) lead to the conclusion that OMB's intent is for commercial organizations to follow Subpart E when administering grants and cooperative agreements. However, Subpart E only applies to non-commercial entities, while 48 CFR Subpart 31.2 applies to commercial entities. It is clear that when those

organizations are administering a Federal contract, they would be directed to follow 48 CFR Subpart 31.2, leading to potential inconsistency of costing. The Department of State has addressed this subject by promulgating 2 CFR 600.101(b) to assure cost consistency shows that this clarification should be made on a government-wide basis.

Response: USAID has revised 2 CFR Part 700 to clarify that Subpart E does not apply to for-profit entities.

Regulatory Findings

For the regulatory findings regarding this rulemaking, please refer to the analysis prepared by OIRA in the interim final rule, which is incorporated herein. 79 FR at 75876.

List of Subjects in 22 CFR Part 700

Accounting, administrative practice and procedure, audit requirements, grant administration, grant programs, reporting and recordkeeping requirements.

Regulatory Text

For the reasons stated in the preamble, The Agency for International Development amends 2 CFR Chapter VII by revising part 700 to read as follows:

PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

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Authority: Sec. 621, Pub. L. 87-195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435.

Subpart A—Acronyms and Definitions

§700.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Activity means a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed.

Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

Agreement Officer means a person with the authority to enter into, administer, terminate and/or closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly

authorized warrant or other valid delegation of authority. The term "Agreement Officer" includes persons warranted as "Grant Officers." It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

Apparently successful applicant(s) means the applicant(s) for USAID funding recommended for an award after merit review, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. Apparently successful applicant status confers no right and constitutes no USAID commitment to an award, which still must be executed by the Agreement Officer.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants, cooperative agreements, and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; contracts which are required to be entered into and administered under procurement laws and regulations.

Branding strategy means a strategy the apparently successful applicant submits at the specific request of an USAID Agreement Officer after merit review of an application for USAID funding, describing how the program, project, or activity is named and positioned, as well as how it is promoted and communicated to beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use in administration of the USAID-funded grant, cooperative agreement, or other agreement or subagreement.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment, on which USAID sponsorship ends.

Marking plan means a plan that the apparently successful applicant submits at the specific request of a USAID Agreement Officer after merit review of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

Principal officer means the most senior officer in an USAID Operating Unit in the field, e.g., USAID Mission Director or USAID

Representative. For global programs managed from Washington but executed across many countries such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principle U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

Program means an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the

responsibilities assigned to it. Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; websites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

Suspension means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O's 12549 and 12689, "Debarment and Suspension." See 2 CFR Part 780.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

USAID means the United States Agency for International Development.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is "from the American people." In exceptional circumstances, upon a written determination by the USAID Administrator, the definition of the USAID Identity may be amended to

include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency Federal initiative that requires consistent and uniform branding and marking by all participating agencies. The USAID Identity (including any required presidential initiative or related identity) is available on the USAID Web site at <http://www.usaid.gov/branding> and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

Subpart B—General Provisions

§700.2 Adoption of 2 CFR Part 200.

Under the authority listed above the Agency for International Development adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Agency for International Development (USAID) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part.

§700.3 Applicability.

(a) Subparts A through D of 2 CFR Part 200 apply to for-profit entities. The Federal Acquisition Regulation (FAR) at 48 CFR Part 30, Cost Accounting Standards, and Part 31, Contract Cost Principles and Procedures, takes precedence over the cost principles in Subpart E for Federal awards to for-profit entities.

(b) Subpart E applies to foreign organizations and foreign public entities, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the

international obligations of the United States or the statute or regulations of a foreign government.

§700.4 Exceptions.

Consistent with 2 CFR 200.102(b):

(a) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(b) USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, is also authorized to approve exceptions, on a class or an individual case basis, to USAID program specific assistance regulations other than those which implement statutory and executive order requirements.

(c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes or regulations except for the requirements in Subpart F—Audit Requirements of this part. A Federal awarding agency may apply less restrictive requirements when making awards at or below the simplified acquisition threshold, or when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of 2 CFR 200, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.

§700.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 22 of the Code of Federal Regulations: 22 CFR Part 226, "Administration of Assistance Awards To U.S. Non-Governmental Organizations."

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§700.6 Metric system of measurement.

(a) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

(b) Wherever measurements are required or authorized, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Agreement Officer in writing when it has been found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

§700.7 Advance payment.

Advance payment mechanisms include, but are not limited to, Letter of Credit, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 205.

Subpart D—Post Federal Award Requirements

§700.8 Payment.

(a) Use of resources before requesting advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(b) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(1) Except for situations described in paragraph (b) (2) of this section, USAID does not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for receipt, obligation and expenditure of funds.

(2) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

§700.9 Property standards.

(a) *Real property.* Unless the agreement provides otherwise, title to real property will vest in accordance with 2 CFR 200.311.

(b) *Equipment.* Unless the agreement provides otherwise, title to equipment will vest in accordance with 2 CFR 200.313.

§700.10 Cost sharing or matching.

Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching.

Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which would have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

§700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the

award, the recipient must to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU), USAID, Washington, D.C. 20523, at least 45 days prior to placing any order or contract in excess of the simplified acquisition threshold:

- (1) Brief general description and quantity of goods or services;
 - (2) Closing date for receiving quotations, proposals or bids; and
 - (3) Address where solicitations or specifications can be obtained.
- (b) [Reserved]

§700.12 Contract provisions.

(a) The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the non-Federal entity must include a provision to the effect that the non-Federal Entity, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

§700.13 Additional provisions for awards to for-profit entities.

(a) This paragraph contains additional provisions that apply to awards to for-profit entities. These provisions supplement and make exceptions for awards to for-profit entities from other provisions of this part.

(1) Prohibition against profit. No funds will be paid as profit to any for-profit entity receiving or administering Federal financial assistance as a recipient or subrecipient. Federal financial assistance does not include contracts as defined at 2 CFR 200.22, other contracts

a Federal agency uses to buy goods or services from a contractor, or contracts to operate Federal government owned, contractor operated facilities (GOCOs). Profit is any amount in excess of allowable direct and indirect costs.

(2) Program income. As described in § 200.307(e)(2), program income earned by a for-profit entity may not be added to the Federal award.

(b) [Reserved]

Termination and Disputes

§700.14 Termination.

If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is put into effect and the situation causing the suspension continues for 60 calendar days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

§700.15 Disputes.

(a) Any dispute under or relating to a grant or agreement will be decided by the USAID Agreement Officer. The Agreement Officer must furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer will be final unless, within 30 calendar days of receipt of the decision, the recipient appeals the decision to USAID's Assistant Administrator, Bureau for

Management, or designee as delegated in Agency policy. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review of the record by the USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, the recipient will be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, will be final.

USAID-Specific Requirements

§700.16 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraphs (c) through (f) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to include a USAID-approved marking provision in any USAID funded subaward, to read as follows:

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

(b) Subject to §700.16(a), (h), and (j), program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to §700.16(a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked with the USAID Identity.

(1) Any "public communications" as defined in §700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(d) Subject to §700.16(a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients are encouraged otherwise to acknowledge USAID and the American people's support.

(e) Subject to §700.16(a), (h), and (j), all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, must be marked with the USAID Identity.

(f) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in §700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Branding Strategy, and will negotiate, approve and include the Branding Strategy in the award. Failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(g) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in §700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (h) of this section. All estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, must be included in the total cost estimate of the grant or cooperative agreement or other assistance award, and are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Marking Plan, and will negotiate, approve and include the Marking Plan in the award. Failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files. Agreement

Officer's Representatives will be assigned responsibility to monitor marking requirements on the basis of the approved Marking Plan.

(h) Presumptive exceptions:

(1) The above marking requirements in §700.16(a) through (e) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as "by" or "from" a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(i) In cases where the Marking Plan has not been complied with, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.338 through 2 CFR 200.342, and 2 CFR 700.14.

(j) (1) *Waivers*. USAID Principal Officers, defined for purposes of this provision at §700.1, may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is

required while a waiver determination is pending. The waiver determination on safety or security grounds must be made in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers "flow down" to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers' determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., the

USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

(End of award term)

Angelique M. Crumbly

Agency Regulatory Official

U.S. Agency for International Development

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